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FURTHER REPORT OF THE SECRETARY-GENERAL CONCERNING THE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 435 (1978) CONCERNING THE QUESTION OF NAMIBIA

Addendum

Since my last report to the Security Council (S/20967/Add.1 of 29 November 1989), I orally informed the members of the Council on 9 February 1990 that the same day, the Constituent Assembly of Namibia meeting in Windhoek had approved, by consensus, the Constitution for an independent Namibia. Before that, the Constituent Assembly had established 21 March 1990 as Independence Day.

The Constitution is to enter into force on Independence Day. As the fundamental law of the sovereign and independent Republic of Namibia, the Constitution reflects the "Principles for a Constituent Assembly and for a Constitution for an independent Namibia" adopted by all the parties concerned in 1982 and set out in the annex to document S/15287 of 12 July 1982.

The full and definitive text of the Constitution as adopted is annexed to the present report (annex I), together with a note entitled "Comparison of the Constitution of the Republic of Namibia with the 1982 Constitutional Principles" (annex II).

Annex I

CONSTITUTION OF THE REPUBLIC OF NAMIBIA

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CONSTITUTION OF THE REPUBLIC OF NAMIBIA

PREAMBLE

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace;

WHEREAS the said rights include the right of the individual to life, liberty and the pursuit of happiness, regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status;

WHEREAS the said rights are most effectively maintained and protected in a democratic society, where the government is responsible to freely elected representatives of the people, operating under a sovereign constitution and a free and independent judiciary;

WHEREAS these rights have for so long been denied to the people of Namibia by colonialism, racism and apartheid;

WHEREAS we the people of Namibia -

have finally emerged victorious in our struggle against colonialism, racism and apartheid;

are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle;

desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world;

will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state;

committed to these principles, have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing to all our citizens justice, liberty, equality and fraternity,

NOW THEREFORE, we the people of Namibia accept and adopt this Constitution as the fundamental law of our Sovereign and Independent Republic.

CHAPTER 1

THE REPUBLIC

Article 1 Establishment of the Republic of Namibia and Identification of its Territory

(1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.

(2) All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State.

(3) The main organs of the State shall be the Executive, the Legislature and the Judiciary.

(4) The national territory of Namibia shall consist of the whole of the territory recognised by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia, and its southern boundary shall extend to the middle of the Orange River.

(5) Windhoek shall be the seat of central Government.

(6) This Constitution shall be the Supreme Law of Namibia.

Article 2 National Symbols

(1) Namibia shall have a National Flag, the description of which is set out in Schedule 6 hereof.

(2) Namibia shall have a National Coat of Arms, a National Anthem and a National Seal to be determined by Act of Parliament, which shall require a two-thirds majority of all the members of the National Assembly for adoption and amendment.

(3) (a) The National Seal of the Republic of Namibia shall show the Coat of Arms, circumscribed with the word 'NAMIBIA' and the motto of the country, which shall be determined by Act of Parliament as aforesaid.

(b) The National Seal shall be in the custody of the President or such person whom the President may designate for such purpose and shall be used on such official documents as the President may determine.

Article 3 Language

(1) The official language of Namibia shall be English.

(2) Nothing contained in this Constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools financed or subsidised by the State, subject to compliance with such requirements as may be imposed by law, to ensure proficiency in the official language, or for pedagogic reasons.

(3) Nothing contained in Sub-Article (1) hereof shall preclude legislation by Parliament which permits the use of a language other than English for legislative, administrative and judicial purposes in regions or areas where such other language or languages are spoken by a substantial component of the population.

CHAPTER 2

CITIZENSHIP

Article 4 Acquisition and Loss of Citizenship

(1) The following persons shall be citizens of Namibia by birth:

(a) those born in Namibia before the date of Independence whose fathers or mothers would have been Namibian citizens at the time of the birth of such persons, if this Constitution had been in force at that time; and

(b) those born in Namibia before the date of Independence, who are not Namibian citizens under Sub-Article (a) hereof, and whose fathers or mothers were ordinarily resident in Namibia at the time of the birth of such persons: provided that their fathers or mothers were not then persons:

(aa) who were enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges; or

(bb) who were career representatives of another country; or

(cc) who were members of any police, military or security unit seconded for service within Namibia by the Government of another country: provided further that this Sub-Article shall not apply to persons claiming citizenship of Namibia by birth if such persons were ordinarily resident in Namibia at the date of Independence and had been so resident for a continuous period of not less than five (5) years prior to such date, or if the fathers or mothers of such persons claiming citizenship were ordinarily resident in Namibia at the date of the birth of such persons and had been so resident for a continuous period of not less than five (5) years prior to such date;

(c) those born in Namibia after the date of Independence whose fathers or mothers are Namibian citizens at the time of the birth of such persons;

(d) those born in Namibia after the date of Independence who do not qualify for citizenship under Sub-Article (c) hereof, and whose fathers or mothers are ordinarily resident in Namibia at the time of the birth of such persons: provided that their fathers or mothers are not then persons:

(aa) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges; or

(bb) who are career representatives of another country; or

(cc) who are members of any police, military or security unit seconded for service within Namibia by the Government of another country; or

(dd) who are illegal immigrants:

provided further that Sub-Articles (aa), (bb), (cc) and (dd) hereof will not apply to children who would otherwise be stateless.

(2) The following persons shall be citizens of Namibia by descent:

(a) those who are not Namibian citizens under Sub-Article (1) hereof and whose fathers or mothers at the time of the birth of such persons are citizens of Namibia or whose fathers or mothers would have qualified for Namibian citizenship by birth under Sub-Article (1) hereof, if this Constitution had been in force at that time; and

(b) who comply with such requirements as to registration of citizenship as may be required by Act of Parliament: provided that nothing in this Constitution shall preclude Parliament from enacting legislation which requires the birth of such persons born after the date of Independence to be registered within a specific time either in Namibia or at an embassy, consulate or office of a trade representative of the Government of Namibia.

(3) The following persons shall be citizens of Namibia by marriage:

(a) those who are not Namibian citizens under Sub-Article (1) or (2) hereof and who:

(aa) in good faith marry a Namibian citizen or, prior to the coming into force of this Constitution, in good faith married a person who would have qualified for Namibian citizenship if this Constitution had been in force, and

(bb) subsequent to such marriage have ordinarily resided in Namibia as the spouse of such person for a period of not less than two (2) years, and

(cc) apply to become citizens of Namibia.

(b) For the purposes of this Sub-Article (and without derogating from any effect that it may have for any other purposes) a marriage by customary law shall be deemed to be a marriage: provided that nothing in this Constitution shall preclude Parliament from enacting legislation which defines the requirements which need to be satisfied for a marriage by customary law to be recognised as such for the purposes of this Sub-Article.

(4) Citizenship by registration may be claimed by persons who are not Namibian citizens under Sub-Articles (1), (2) or (3) hereof and who were ordinarily resident in Namibia at the date of Independence, and had been so resident for a continuous period of not less than five (5) years prior to such date: provided that application for Namibian citizenship under this Sub-Article is made within a period of twelve (12) months from the date of Independence, and prior to making such application, such persons renounce the citizenship of any other country of which they are citizens.

(5) Citizenship by naturalisation may be applied for by persons who are not Namibian citizens under Sub-Articles (1), (2), (3) or (4) hereof and who:

(a) are ordinarily resident in Namibia at the time when the application for naturalisation is made; and

(b) have been so resident in Namibia for a continuous period of not less than five (5) years (whether before or after the date of Independence); and

(c) satisfy any other criteria pertaining to health, morality, security or legality of residence as may be prescribed by law.

(6) Nothing contained herein shall preclude Parliament from authorizing by law the conferment of Namibian citizenship upon any fit and proper person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or at any time after the date of Independence.

(7) Namibian citizenship shall be lost by persons who renounce their Namibian citizenship by voluntarily signing a formal declaration to that effect.

(8) Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the date of Independence:

(a) have acquired the citizenship of any other country by any voluntary act; or

(b) have served or volunteered to serve in the armed or security forces of any other country without the written permission of the Namibian Government; or

(c) have taken up permanent residence in any other country and have absented themselves thereafter from Namibia for a period in excess of two (2) years without the written permission of the Namibian Government:

provided that no person who is a citizen of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation.

(9) Parliament shall be entitled to make further laws not inconsistent with this Constitution regulating the acquisition or loss of Namibian citizenship.

CHAPTER 3

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Article 5 Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.

Article 6 Protection of Life

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

Article 7 Protection of Liberty

No persons shall be deprived of personal liberty except according to procedures established by law.

Article 8 Respect for Human Dignity

(1) The dignity of all persons shall be inviolable.

(2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9 Slavery and Forced Labour

(1) No persons shall be held in slavery or servitude.

(2) No persons shall be required to perform forced labour.

(3) For the purposes of this Article, the expression "forced labour" shall not include:

(a) any labour required in consequence of a sentence or order of a Court;

(b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a Court, is reasonably necessary in the interests of hygiene;

(c) any labour required of members of the defence force, the police force and the prison service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;

(d) any labour required during any period of public emergency or in the event of any other emergency or calamity, which threatens the life and well-being of the community, to the extent that requiring such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation;

(e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Article 10 Equality and Freedom from Discrimination

(1) All persons shall be equal before the law.

(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Article 11 Arrest and Detention

(1) No persons shall be subject to arbitrary arrest or detention.

(2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest.

(3) All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer within a period of forty-eight (48) hours of their arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a Magistrate or other judicial officer.

(4) Nothing contained in Sub-Article (3) hereof shall apply to illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.

(5) No persons who have been arrested and held in custody as illegal immigrants shall be denied the right to consult confidentially legal practitioners of their choice, and there shall be no interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security or for public safety.

Article 12 Fair Trial

(1) (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law, provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.

(b) A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.

(c) Judgments in criminal cases shall be given in public, except where the interests of juvenile persons or morals otherwise require.

(d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.

(e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.

(f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a marriage by customary law, and no Court shall admit in evidence against such persons testimony which has been obtained from such persons in violation of Article 8(2)(b) hereof.

(2) No persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law: provided that nothing in this Sub-Article shall be construed as changing the provisions of the common law defences of "previous acquittal" and "previous conviction".

(3) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

Article 13 Privacy

(1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

(2) Searches of the person or the homes of individuals shall only be justified:

(a) where these are authorised by a competent judicial officer;

(b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse are properly satisfied.

Article 14 Family

(1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 15 Children's Rights

(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.

(2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development. For the purposes of this Sub-Article children shall be persons under the age of sixteen (16) years.

(3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub-Article shall be construed as derogating in any way from Sub-Article (2) hereof.

(4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.

(5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

Article 16 Property

(1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

(2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

Article 17 Political Activity

(1) All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and, subject to such qualifications prescribed by law as are necessary in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

(2) Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office, unless otherwise provided herein.

(3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society.

Article 18 Administrative Justice

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.

Article 19 Culture

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

Article 20 Education

(1) All persons shall have the right to education.

(2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.

(3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.

(4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education, provided that:

(a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with any law authorising and regulating such registration;

(b) the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State;

(c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed;

(d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour.

Article 21 Fundamental Freedoms

(1) All persons shall have the right to:

(a) freedom of speech and expression, which shall include freedom of the press and other media;

(b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;

(c) freedom to practise any religion and to manifest such practice;

(d) assemble peaceably and without arms;

(e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;

(f) withhold their labour without being exposed to criminal penalties;

(g) move freely throughout Namibia;

(h) reside and settle in any part of Namibia;

(i) leave and return to Namibia;

(j) practise any profession, or carry on any occupation, trade or business.

(2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Article 22 Limitation upon Fundamental Rights and Freedoms

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

(a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;

(b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

Article 23 Apartheid and Affirmative Action

(1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.

(2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force and the prison service.

(3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

Article 24 Derogation

(1) Nothing contained in or done under the authority of Article 26 hereof shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is in a state of national defence or any period when a declaration of emergency under this Constitution is in force.

(2) Where any persons are detained by virtue of such authorisation as is referred to in Sub-Article (1) hereof, the following provisions shall apply:

(a) they shall, as soon as reasonably practicable and in any case not more than five (5) days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained and, at their request, this statement shall be read to them;

(b) not more than fourteen (14) days after the commencement of their detention, a notification shall be published in the Gazette stating that they have been detained and giving particulars of the provision of law under which their detention is authorised;

(c) not more than one (1) month after the commencement of their detention and thereafter during their detention at intervals of not more than three (3) months, their cases shall be reviewed by the Advisory Board referred to in Article 26(5)(c) hereof, which shall order their release from detention if it is satisfied that it is not reasonably necessary for the purposes of the emergency to continue the detention of such persons;

(d) they shall be afforded such opportunity for the making of representations as may be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons.

(3) Nothing contained in this Article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 8, 9, 10, 12, 14, 15, 18, 19 and 21(1)(a), (b), (c) and (e) hereof, or the denial of access by any persons to legal practitioners or a Court of law.

Article 25 Enforcement of Fundamental Rights and Freedoms

(1) Save in so far as it may be authorised to do so by this Constitution, Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid: provided that:

(a) a competent Court, instead of declaring such law or action to be invalid, shall have the power and the discretion in an appropriate case to allow Parliament, any subordinate legislative authority, or the Executive and the agencies of Government, as the case may be, to correct any defect in the impugned law or action within a specified period, subject to such conditions as may be specified by it. In such event and until such correction, or until the expiry of the time limit set by the Court, whichever be the shorter, such impugned law or action shall be deemed to be valid;

(b) any law which was in force immediately before the date of Independence shall remain in force until amended, repealed or declared unconstitutional. If a competent Court is of the opinion that such law is unconstitutional, it may either set aside the law, or allow Parliament to correct any defect in such law, in which event the provisions of Sub-Article (a) hereof shall apply.

(2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.

(3) Subject to the provisions of this Constitution, the Court referred to in Sub-Article (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.

(4) The power of the Court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.

CHAPTER 4

PUBLIC EMERGENCY, STATE OF NATIONAL DEFENCE AND MARTIAL LAW

Article 26 State of Emergency, State of National Defence and Martial Law

(1) At a time of national disaster or during a state of national defence or public emergency threatening the life of the nation or the constitutional order, the President may by Proclamation in the Gazette declare that a state of emergency exists in Namibia or any part thereof.

(2) A declaration under Sub-Article (1) hereof, if not sooner revoked, shall cease to have effect:

(a) in the case of a declaration made when the National Assembly is sitting or has been summoned to meet, at the expiration of a period of seven (7) days after publication of the declaration; or

(b) in any other case, at the expiration of a period of thirty (30) days after publication of the declaration;

unless before the expiration of that period, it is approved by a resolution passed by the National Assembly by a two-thirds majority of all its members.

(3) Subject to the provisions of Sub-Article (4) hereof, a declaration approved by a resolution of the National Assembly under Sub-Article (2) hereof shall continue to be in force until the expiration of a period of six (6) months after being so approved or until such earlier date as may be specified in the resolution: provided that the National Assembly may, by resolution by a two-thirds majority of all its members, extend its approval of the declaration for periods of not more than six (6) months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration approved by it in terms of this Article.

(5) (a) During a state of emergency in terms of this Article or when a state of national defence prevails, the President shall have the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of national security, public safety and the maintenance of law and order.

(b) The powers of the President to make such regulations shall include the power to suspend the operation of any rule of the common law or statute or any fundamental right or freedom protected by this Constitution, for such period and subject to such conditions as are reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency: provided that nothing in this Sub-Article shall enable the President to act contrary to the provisions of Article 24 hereof.

(c) Where any regulation made under Sub-Article (b) hereof provides for detention without trial, provision shall also be made for an Advisory Board, to be appointed by the President on the recommendation of the Judicial Service Commission, and consisting of no more than five (5) persons, of whom no fewer than three (3) persons shall be Judges of the Supreme Court or the High Court or qualified to be such. The Advisory Board shall perform the function set out in Article 24(2)(c) hereof.

(6) Any regulations made by the President pursuant to the provisions of Sub-Article (5) hereof shall cease to have legal force if they have not been approved by a resolution of the National Assembly within fourteen (14) days from the date when the National Assembly first sits in session after the date of the commencement of any such regulations.

(7) The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia: provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-thirds majority of all the members of the National Assembly.

CHAPTER 5

THE PRESIDENT

Article 27 Head of State and Government

(1) The President shall be the Head of State and of the Government and the Commander-in-Chief of the Defence Force.

(2) The executive power of the Republic of Namibia shall vest in the President and the Cabinet.

(3) Except as may be otherwise provided in this Constitution or by law, the President shall in the exercise of his or her functions be obliged to act in consultation with the Cabinet.

Article 28 Election

(1) The President shall be elected in accordance with the provisions of this Constitution and subject thereto.

(2) Election of the President shall be:

(a) by direct, universal and equal suffrage; and

(b) conducted in accordance with principles and procedures to be determined by Act of Parliament: provided that no person shall be elected as President unless he or she has received more than fifty (50) per cent of the votes cast and the necessary number of ballots shall be conducted until such result is reached.

(3) Every citizen of Namibia by birth or descent, over the age of thirty-five (35) years, and who is eligible to be elected to office as a member of the National Assembly shall be eligible for election as President.

(4) The procedures to be followed for the nomination of candidates for election as President, and for all matters necessary and incidental to ensure the free, fair and effective election of a President, shall be determined by Act of Parliament: provided that any registered political party shall be entitled to nominate a candidate, and any person supported by a minimum number of registered voters to be determined by Act of Parliament shall also be entitled to be nominated as a candidate.

Article 29 Term of Office

(1) (a) The President's term of office shall be five (5) years unless he or she dies or resigns before the expiry of the said term or is removed from office.

(b) In the event of the dissolution of the National Assembly in the circumstances provided for under Article 57(1) hereof, the President's term of office shall also expire.

(2) A President shall be removed from office if a two-thirds majority of all the members of the National Assembly, confirmed by a two-thirds majority of all the members of the National Council, adopts a resolution impeaching the President on the ground that he or she has been guilty of a violation of the Constitution or guilty of a serious violation of the laws of the land or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of President.

(3) A person shall hold office as President for not more than two terms.

(4) If a President dies, resigns or is removed from office in terms of this Constitution, the vacant office of President shall be filled for the unexpired period thereof as follows:

(a) if the vacancy occurs not more than one (1) year before the date on which Presidential elections are required to be held, the vacancy shall be filled in accordance with the provisions of Article 34 hereof;

(b) if the vacancy occurs more than one (1) year before the date on which Presidential elections are required to be held, an election for the President shall be held in accordance with the provisions of Article 28 hereof within a period of ninety (90) days from the date on which the vacancy occurred, and pending such election the vacant office shall be filled in accordance with the provisions of Article 34 hereof.

(5) If the President dissolves the National Assembly under Articles 32(3)(a) and 57(1) hereof, a new election for President shall be held in accordance with the provisions of Article 28 hereof within ninety (90) days, and pending such election the President shall remain in office, and the provisions of Article 58 hereof shall be applicable.

(6) If a person becomes President under Sub-Article (4) hereof, the period of time during which he or she holds office consequent upon such election or succession shall not be regarded as a term for the purposes of Sub-Article (3) hereof.

Article 30 Oath or Affirmation

Before formally assuming office, a President-elect shall make the following oath or affirmation which shall be administered by the Chief Justice or a Judge designated by the Chief Justice for this purpose:

"I, ..., do hereby swear/solemnly affirm,

That I will strive to the best of my ability to uphold, protect and defend as the Supreme Law the Constitution of the Republic of Namibia, and faithfully to obey, execute and administer the laws of the Republic of Namibia;

That I will protect the independence, sovereignty, territorial integrity and the material and spiritual resources of the Republic of Namibia; and

That I will endeavour to the best of my ability to ensure justice for all the inhabitants of the Republic of Namibia.

(in the case of an oath)
So help me God."

Article 31 Immunity from Criminal and Civil Proceedings

(1) No person holding the office of President or performing the functions of President may be sued in any civil proceedings save where such proceedings concern an act done in his or her official capacity as President.

(2) No person holding the office of President shall be charged with any criminal offence or be amenable to the criminal jurisdiction of any Court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as President.

(3) After a President has vacated that office:

(a) no Court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;

(b) a civil or criminal Court shall only have jurisdiction to entertain proceedings against him or her, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office as President, if Parliament by resolution has removed the President on the grounds specified in this Constitution and if a resolution is adopted by Parliament resolving that any such proceedings are justified in the public interest notwithstanding any damage such proceedings might cause to the dignity of the office of President.

Article 32 Functions, Powers and Duties

(1) As the Head of State, the President shall uphold, protect and defend the Constitution as the Supreme Law, and shall perform with dignity and leadership all acts necessary, expedient, reasonable and incidental to the discharge of the executive functions of the Government, subject to the overriding terms of this Constitution and the laws of Namibia, which he or she is constitutionally obliged to protect, to administer and to execute.

(2) In accordance with the responsibility of the executive branch of Government to the legislative branch, the President and the Cabinet shall each year during the consideration of the official budget attend Parliament. During such session the President shall address Parliament on the state of the nation and on the future policies of the Government, shall report on the policies of the previous year and shall be available to respond to questions.

(3) Without derogating from the generality of the functions and powers contemplated by Sub-Article (1) hereof, the President shall preside over meetings of the Cabinet and shall have the power, subject to this Constitution to:

(a) dissolve the National Assembly by Proclamation in the circumstances provided for in Article 57(1) hereof;

(b) determine the times for the holding of special sessions of the National Assembly, and to prorogue such sessions;

(c) accredit, receive and recognize ambassadors, and to appoint ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

(d) pardon or reprieve offenders, either unconditionally or subject to such conditions as the President may deem fit;

(e) negotiate and sign international agreements, and to delegate such power;

(f) declare martial law or, if it is necessary for the defence of the nation, declare that a state of national defence exists: provided that this power shall be exercised subject to the terms of Article 26(7) hereof;

(g) establish and dissolve such Government departments and ministries as the President may at any time consider to be necessary or expedient for the good government of Namibia;

(h) confer such honours as the President considers appropriate on citizens, residents and friends of Namibia in consultation with interested and relevant persons and institutions;

(i) appoint the following persons:

(aa) the Prime Minister;

(bb) Ministers and Deputy-Ministers;

(cc) the Attorney-General;

(dd) the Director-General of Planning;

(ee) any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President.

(4) The President shall also have the power, subject to this Constitution, to appoint:

(a) on the recommendation of the Judicial Service Commission:

(aa) the Chief Justice, the Judge-President of the High Court and other Judges of the Supreme Court and the High Court;

(bb) the Ombudsman;

(cc) the Prosecutor-General;

(b) on the recommendation of the Public Service Commission:

(aa) the Auditor-General;

(bb) the Governor and the Deputy-Governor of the Central Bank;

(c) on the recommendation of the Security Commission:

(aa) the Chief of the Defence Force;

(bb) the Inspector-General of Police;

(cc) the Commissioner of Prisons.

(5) Subject to the provisions of this Constitution dealing with the signing of any laws passed by Parliament and the promulgation and publication of such laws in the Gazette, the President shall have the power to:

(a) sign and promulgate any Proclamation which by law he or she is entitled to proclaim as President;

(b) initiate, in so far as he or she considers it necessary and expedient, laws for submission to and consideration by the National Assembly;

(c) appoint as members of the National Assembly but without any vote therein, not more than six (6) persons by virtue of their special expertise, status, skill or experience.

(6) Subject to the provisions of this Constitution or any other law, any person appointed by the President pursuant to the powers vested in him or her by this Constitution or any other law may be removed by the President by the same process through which such person was appointed.

(7) Subject to the provisions of this Constitution and of any other law of application in this matter, the President may, in consultation with the Cabinet and on the recommendation of the Public Service Commission:

(a) constitute any office in the public service of Namibia not otherwise provided for by any other law;

(b) appoint any person to such office;

(c) determine the tenure of any person so appointed as well as the terms and conditions of his or her service.

(8) All appointments made and actions taken under Sub-Articles (3), (4), (5), (6) and (7) hereof shall be announced by the President by Proclamation in the Gazette.

(9) Subject to the provisions of this Constitution and save where this Constitution otherwise provides, any action taken by the President pursuant to any power vested in the President by the terms of this Article shall be capable of being reviewed, reversed or corrected on such terms as are deemed expedient and proper should there be a resolution proposed by at least

one-third of all the members of the National Assembly and passed by a two-thirds majority of all the members of the National Assembly disapproving any such action and resolving to review, reverse or correct it.

(10) Notwithstanding the review, reversal or correction of any action in terms of Sub-Article (9) hereof, all actions performed pursuant to any such action during the period preceding such review, reversal or correction shall be deemed to be valid and effective in law, until and unless Parliament otherwise enacts.

Article 33 Remuneration

Provision shall be made by Act of Parliament for the payment out of the State Revenue Fund of remuneration and allowances for the President, as well as for the payment of pensions to former Presidents and, in the case of their deaths, to their surviving spouses.

Article 34 Succession

(1) If the office of President becomes vacant or if the President is otherwise unable to fulfil the duties of the office, the following persons shall in the order provided for in this Sub-Article act as President for the unexpired portion of the President's term of office or until the President is able to resume office, whichever is the earlier:

(a) the Prime Minister;

(b) the Deputy-Prime Minister;

(c) a person appointed by the Cabinet.

(2) Where it is regarded as necessary or expedient that a person deputize for the President because of a temporary absence from the country or because of pressure of work, the President shall be entitled to nominate any person enumerated in Sub-Article (1) hereof to deputize for him or her in respect of such specific occasions or such specific matters and for such specific periods as in his or her discretion may be considered wise and expedient, subject to consultation with the Cabinet.

CHAPTER 6

THE CABINET

Article 35 Composition

(1) The Cabinet shall consist of the President, the Prime Minister and such other Ministers as the President may appoint from the members of the National Assembly, including members nominated under Article 46(1)(b) hereof, for the purposes of administering and executing the functions of the Government.

(2) The President may also appoint a Deputy-Prime Minister to perform such functions as may be assigned to him or her by the President or the Prime Minister.

(3) The President or, in his or her absence, the Prime Minister or other Minister designated for this purpose by the President, shall preside at meetings of the Cabinet.

Article 36 Functions of the Prime Minister

The Prime Minister shall be the leader of Government business in Parliament, shall co-ordinate the work of the Cabinet and shall advise and assist the President in the execution of the functions of Government.

Article 37 Deputy-Ministers

The President may appoint from the members of the National Assembly, including members nominated under Article 46(1)(b) hereof, and the National Council such Deputy-Ministers as he or she may consider expedient, to exercise or perform on behalf of Ministers any of the powers, functions and duties which may have been assigned to such Ministers.

Article 38 Oath or Affirmation

Before assuming office, a Minister or Deputy-Minister shall make and subscribe to an oath or solemn affirmation before the President or a person designated by the President for this purpose, in the terms set out in Schedule 2 hereof.

Article 39 Vote of No Confidence

The President shall be obliged to terminate the appointment of any member of the Cabinet, if the National Assembly by a majority of all its members resolves that it has no confidence in that member.

Article 40 Duties and Functions

The members of the Cabinet shall have the following functions:

(a) to direct, co-ordinate and supervise the activities of Ministries and Government departments including para-statal enterprises, and to review and advise the President and the National Assembly on the desirability and wisdom of any prevailing subordinate legislation, regulations or orders pertaining to such para-statal enterprises, regard being had to the public interest;

(b) to initiate bills for submission to the National Assembly;

(c) to formulate, explain and assess for the National Assembly the budget of the State and its economic development plans, and to report to the National Assembly thereon;

(d) to carry out such other functions as are assigned to them by law or are incidental to such assignment;

(e) to attend meetings of the National Assembly and to be available for the purposes of any queries and debates pertaining to the legitimacy, wisdom, effectiveness and direction of Government policies;

(f) to take such steps as are authorised by law to establish such economic organisations, institutions and para-statal enterprises on behalf of the State as are directed or authorised by law;

(g) to formulate, explain and analyse for the members of the National Assembly the goals of Namibian foreign policy and its relations with other States and to report to the National Assembly thereon;

(h) to formulate, explain and analyse for the members of the National Assembly the directions and content of foreign trade policy and to report to the National Assembly thereon;

(i) to assist the President in determining what international agreements are to be concluded, acceded to or succeeded to and to report to the National Assembly thereon;

(j) to advise the President on the state of national defence and the maintenance of law and order and to inform the National Assembly thereon;

(k) to issue notices, instructions and directives to facilitate the implementation and administration of laws administered by the Executive, subject to the terms of this Constitution or any other law;

(l) to remain vigilant and vigorous for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies.

Article 41 Ministerial Accountability

All Ministers shall be accountable individually for the administration of their own Ministries and collectively for the administration of the work of the Cabinet, both to the President and to Parliament.

Article 42 Outside Employment

(1) During their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in activities inconsistent with their positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests.

(2) No members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves.

Article 43 Secretary to the Cabinet

(1) There shall be a Secretary to the Cabinet who shall be appointed by the President and who shall perform such functions as may be determined by law and such functions as are from time to time assigned to the Secretary by the President or the Prime Minister. Upon appointment by the President, the Secretary shall be deemed to have been appointed to such office on the recommendation of the Public Service Commission.

(2) The Secretary to the Cabinet shall also serve as a depository of the records, minutes and related documents of the Cabinet.

CHAPTER 7

THE NATIONAL ASSEMBLY

Article 44 Legislative Power

The legislative power of Namibia shall be vested in the National Assembly with the power to pass laws with the assent of the President as provided in this Constitution subject, where applicable, to the powers and functions of the National Council as set out in this Constitution.

Article 45 Representative Nature

The members of the National Assembly shall be representative of all the people and shall in the performance of their duties be guided by the objectives of this Constitution, by the public interest and by their conscience.

Article 46 Composition

(1) The composition of the National Assembly shall be as follows:

(a) seventy-two (72) members to be elected by the registered voters by general, direct and secret ballot. Every Namibian citizen who has the qualifications described in Article 17 hereof shall be entitled to vote in the elections for members of the National Assembly and, subject to Article 47 hereof, shall be eligible for candidature as a member of the National Assembly;

(b) not more than six (6) persons appointed by the President under Article 32(5)(c) hereof, by virtue of their special expertise, status, skill or experience: provided that such members shall have no vote in the National Assembly, and shall not be taken into account for the purpose of determining any specific majorities that are required under this Constitution or any other law.

(2) Subject to the principles referred to in Article 49 hereof, the members of the National Assembly referred to in Sub-Article (1)(a) hereof shall be elected in accordance with procedures to be determined by Act of Parliament.

Article 47 Disqualification of Members

(1) No persons may become members of the National Assembly if they:

(a) have at any time after Independence been convicted of any offence in Namibia, or outside Namibia if such conduct would have constituted an offence within Namibia, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election; or

(b) have at any time prior to independence been convicted of an offence, if such conduct would have constituted an offence within Namibia after Independence, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election: provided that no person sentenced to death or imprisonment for acts committed in connection with the struggle for the independence of Namibia shall be disqualified under this Sub-Article from being elected as a member of the National Assembly; or

(c) are unrehabilitated insolvents; or

(d) are of unsound mind and have been so declared by a competent Court; or

(e) are remunerated members of the public service of Namibia; or

(f) are members of the National Council, Regional Councils or Local Authorities.

(2) For the purposes of Sub-Article (1) hereof:

(a) no person shall be considered as having been convicted by any Court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction has expired;

(b) the public service shall be deemed to include the defence force, the police force, the prison service, para-statal enterprises, Regional Councils and Local Authorities.

Article 48 Vacation of Seats

(1) Members of the National Assembly shall vacate their seats:

(a) if they cease to have the qualifications which rendered them eligible to be members of the National Assembly;

(b) if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such political party;

(c) if they resign their seats in writing addressed to the Speaker;

(d) if they are removed by the National Assembly pursuant to its rules and standing orders permitting or requiring such removal for good and sufficient reasons;

(e) if they are absent during sittings of the National Assembly for ten (10) consecutive sitting days, without having obtained the special leave of the National Assembly on grounds specified in its rules and standing orders.

(2) If the seat of a member of the National Assembly is vacated in terms of Sub-Article (1) hereof, the political party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating any person on the party's election list compiled for the previous general election, or if there be no such person, by nominating any member of the party.

Article 49 Elections

The election of members in terms of Article 46(1)(a) hereof shall be on party lists and in accordance with the principles of proportional representation as set out in Schedule 4 hereof.

Article 50 Duration

Every National Assembly shall continue for a maximum period of five (5) years, but it may before the expiry of its term be dissolved by the President by Proclamation as provided for in Articles 32(3)(a) and 57(1) hereof.

Article 51 Speaker

(1) At the first sitting of a newly elected National Assembly, the National Assembly, with the Secretary acting as Chairperson, shall elect a member as Speaker. The National Assembly shall then elect another member as Deputy-Speaker. The Deputy-Speaker shall act as Speaker whenever the Speaker is not available.

(2) The Speaker or Deputy-Speaker shall cease to hold office if he or she ceases to be a member of the National Assembly. The Speaker or Deputy-Speaker may be removed from office by resolution of the National Assembly, and may resign

from office or from the National Assembly in writing addressed to the Secretary of the National Assembly.

(3) When the office of Speaker or Deputy-Speaker becomes vacant the National Assembly shall elect a member to fill the vacancy.

(4) When neither the Speaker nor the Deputy-Speaker is available for duty, the National Assembly, with the Secretary acting as Chairperson, shall elect a member to act as Speaker.

Article 52 Secretary and other Officers

(1) Subject to the provisions of the laws pertaining to the public service and the directives of the National Assembly, the Speaker shall appoint a person (or designate a person in the public service made available for that purpose), as the Secretary of the National Assembly, who shall perform the functions and duties assigned to such Secretary by this Constitution or by the Speaker.

(2) Subject to the laws governing the control of public monies, the Secretary shall perform his or her functions and duties under the control of the Speaker.

(3) The Secretary shall be assisted by officers of the National Assembly who shall be persons in the public service made available for that purpose.

Article 53 Quorum

The presence of at least thirty-seven (37) members of the National Assembly entitled to vote, other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers and the performance of its functions.

Article 54 Casting Vote

In the case of an equality of votes in the National Assembly, the Speaker or the Deputy-Speaker or the presiding member shall have and may exercise a casting vote.

Article 55 Oath or Affirmation

Every member of the National Assembly shall make and subscribe to an oath or solemn affirmation before the Chief Justice or a Judge designated by the Chief Justice for this purpose, in the terms set out in Schedule 3 hereof.

Article 56 Assent to Bills

(1) Every bill passed by Parliament in terms of this Constitution in order to acquire the status of an Act of Parliament shall require the assent of the President to be signified by the signing of the bill and the publication of the Act in the Gazette.

(2) Where a bill is passed by a majority of two-thirds of all the members of the National Assembly and has been confirmed by the National Council the President shall be obliged to give his or her assent thereto.

(3) Where a bill is passed by a majority of the members of the National Assembly but such majority consists of less than two-thirds of all the members of the National Assembly and has been confirmed by the National Council, but the President declines to assent to such bill, the President shall communicate such dissent to the Speaker.

(4) If the President has declined to assent to a bill under Sub-Article (3) hereof, the National Assembly may reconsider the bill and, if it so decides, pass the bill in the form in which it was referred back to it, or in an amended form or it may decline to pass the bill. Should the bill then be passed by a majority of the National Assembly it will not require further confirmation by the National Council but, if the majority consists of less than two-thirds of all the members of the National Assembly, the President shall retain his or her power to withhold assent to the bill. If the President elects not to assent to the bill, it shall then lapse.

Article 57 Dissolution

(1) The National Assembly may be dissolved by the President on the advice of the Cabinet if the Government is unable to govern effectively.

(2) Should the National Assembly be dissolved a national election for a new National Assembly and a new President shall take place within a period of ninety (90) days from the date of such dissolution.

Article 58 Conduct of Business after Dissolution

Notwithstanding the provisions of Article 57 hereof:

(a) every person who at the date of its dissolution was a member of the National Assembly shall remain a member of the National Assembly and remain competent to perform the functions of a member until the day immediately preceding the first polling day for the election held in pursuance of such dissolution;

(b) the President shall have power to summon Parliament for the conduct of business during the period following such dissolution, up to and including the day immediately preceding the first polling day for the election held in pursuance of such dissolution, in the same manner and in all respects as if the dissolution had not occurred.

Article 59 Rules of Procedure, Committees and Standing Orders

(1) The National Assembly may make such rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and procedures of committees, and formulate such standing orders, as may appear to it to be expedient or necessary.

(2) The National Assembly shall in its rules of procedure make provision for such disclosures as may be considered to be appropriate in regard to the financial or business affairs of its members.

(3) For the purposes of exercising its powers and performing its functions any committee of the National Assembly established in terms of Sub-Article (1) hereof shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it.

Article 60 Duties, Privileges and Immunities of Members

(1) The duties of the members of the National Assembly shall include the following:

(a) all members of the National Assembly shall maintain the dignity and image of the National Assembly both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly;

(b) all members of the National Assembly shall regard themselves as servants of the people of Namibia and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people.

(2) A private members' bill may be introduced in the National Assembly if supported by one-third of all the members of the National Assembly.

(3) Rules providing for the privileges and immunities of members of the National Assembly shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities.

Article 61 Public Access to Sittings

(1) Save as provided in Sub-Article (2) hereof, all meetings of the National Assembly shall be held in public and members of the public shall have access to such meetings.

(2) Access by members of the public in terms of Sub-Article (1) hereof may be denied if the National Assembly adopts a motion supported by two-thirds of all its members excluding such access to members of the public for specified periods or in respect of specified matters. Such a motion shall only be considered if it is supported by at least one-tenth of all the members of the National Assembly and the debate on such motion shall not be open to members of the public.

Article 62 Sessions

(1) The National Assembly shall sit:

(a) at its usual place of sitting determined by the National Assembly, unless the Speaker directs otherwise on the grounds of public interest, security or convenience;

(b) for at least two (2) sessions during each year, to commence and terminate on such dates as the National Assembly from time to time determines;

(c) for such special sessions as directed by Proclamation by the President from time to time.

(2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as the National Assembly by its rules and standing orders may provide.

(3) The day of commencement of any session of the National Assembly may be altered by Proclamation by the President, if the President is requested to do so by the Speaker on grounds of public interest or convenience.

Article 63 Functions and Powers

(1) The National Assembly, as the principal legislative authority in and over Namibia, shall have the power, subject to this Constitution, to make and repeal laws for the peace, order and good government of the country in the best interest of the people of Namibia.

(2) The National Assembly shall further have the power and function, subject to this Constitution:

(a) to approve budgets for the effective government and administration of the country;

(b) to provide for revenue and taxation;

(c) to take such steps as it considers expedient to uphold and defend this Constitution and the laws of Namibia and to advance the objectives of Namibian independence;

(d) to consider and decide whether or not to succeed to such international agreements as may have been entered into prior to Independence by administrations within Namibia in which the majority of the Namibian people have historically not enjoyed democratic representation and participation;

(e) to agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32(3)(e) hereof;

(f) to receive reports on the activities of the Executive, including para-statal enterprises, and from time to time to require any senior official thereof to appear before any of the committees of the National Assembly to account for and explain his or her acts and programmes;

(g) to initiate, approve or decide to hold a referendum on matters of national concern;

(h) to debate and to advise the President in regard to any matters which by this Constitution the President is authorised to deal with;

(i) to remain vigilant and vigorous for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies;

(j) generally to exercise any other functions and powers assigned to it by this Constitution or any other law and any other functions incidental thereto.

Article 64 Withholding of Presidential Assent

(1) Subject to the provisions of this Constitution, the President shall be entitled to withhold his or her assent to a bill approved by the National Assembly if in the President's opinion such bill would upon adoption conflict with the provisions of this Constitution.

(2) Should the President withhold assent on the grounds of such opinion, he or she shall so inform the Speaker who shall inform the National Assembly thereof, and the Attorney-General, who may then take appropriate steps to have the matter decided by a competent Court.

(3) Should such Court thereafter conclude that such bill is not in conflict with the provisions of this Constitution, the President shall assent to the said bill if it was passed by the National Assembly by a two-thirds majority of all its members. If the bill was not passed with such majority, the President may withhold his or her assent to the bill, in which event the provisions of Article 56(3) and (4) hereof shall apply.

(4) Should such Court conclude that the disputed bill would be in conflict with any provisions of this Constitution, the said bill shall be deemed to have lapsed and the President shall not be entitled to assent thereto.

Article 65 Signature and Enrolment of Acts

(1) When any bill has become an Act of Parliament as a result of its having been passed by Parliament, signed by the President and published in the Gazette, the Secretary of the National Assembly shall promptly cause two (2) fair copies of such Act in the English language to be enrolled in the office of the Registrar of the Supreme Court and such copies shall be conclusive evidence of the provisions of the Act.

(2) The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect the durability of the said copies and the convenience of the Registrar's staff.

Article 66 Customary and Common Law

(1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.

(2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.

Article 67 Requisite Majorities

Save as provided in this Constitution, a simple majority of votes cast in the National Assembly shall be sufficient for the passage of any bill or resolution of the National Assembly.

CHAPTER 8

THE NATIONAL COUNCIL

Article 68 Establishment

There shall be a National Council which shall have the powers and functions set out in this Constitution.

Article 69 Composition

(1) The National Council shall consist of two (2) members from each region referred to in Article 102 hereof, to be elected from amongst their members by the Regional Council for such region.

(2) The elections of members of the National Council shall be conducted according to procedures to be prescribed by Act of Parliament.

Article 70 Term of Office of Members

(1) Members of the National Council shall hold their seats for six (6) years from the date of their election and shall be eligible for re-election.

(2) When a seat of a member of the National Council becomes vacant through death, resignation or disqualification, an election for a successor to occupy the vacant seat until the expiry of the predecessor's term of office shall be held, except in the instance where such vacancy arises less than six (6) months before the expiry of the term of the National Council, in which instance such vacancy need not be filled. Such election shall be held in accordance with the procedures prescribed by the Act of Parliament referred to in Article 69(2) hereof.

Article 71 Oath or Affirmation

Every member of the National Council shall make and subscribe to an oath or solemn affirmation before the Chief Justice or a Judge designated by the Chief Justice for this purpose, in the terms set out in Schedule 3 hereof.

Article 72 Qualifications of Members

No person shall be qualified to be a member of the National Council if he or she is an elected member of a Local Authority, and unless he or she is qualified under Article 47(1)(a) to (e) hereof to be a member of the National Assembly.

Article 73 Chairperson and Vice-Chairperson

The National Council shall, before proceeding to the dispatch of any other business, elect from its members a Chairperson and a Vice-Chairperson. The Chairperson, or in his or her absence the Vice-Chairperson, shall preside over sessions of the National Council. Should neither the Chairperson nor the Vice-Chairperson be present at any session, the National Council shall elect from amongst its members a person to act as Chairperson in their absence during that session.

Article 74 Powers and Functions

(1) The National Council shall have the power to:

(a) consider in terms of Article 75 hereof all bills passed by the National Assembly;

(b) investigate and report to the National Assembly on any subordinate legislation, reports and documents which under law must be tabled in the National Assembly and which are referred to it by the National Assembly for advice;

(c) recommend legislation on matters of regional concern for submission to and consideration by the National Assembly;

(d) perform any other functions assigned to it by the National Assembly or by an Act of Parliament.

(2) The National Council shall have the power to establish committees and to adopt its own rules and procedures for the exercise of its powers and the performance of its functions. A committee of the National Council shall be entitled to conduct all such hearings and collect such evidence as it considers necessary for the exercise of the National Council's powers of review and investigations, and for such purposes shall have the powers referred to in Article 59(3) hereof.

(3) The National Council shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members.

(4) The duties of the members of the National Council shall include the following:

(a) all members of the National Council shall maintain the dignity and image of the National Council both during the sittings of the National Council as well as in their acts and activities outside the National Council;

(b) all members of the National Council shall regard themselves as servants of the people of Namibia and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people.

(5) Rules providing for the privileges and immunities of members of the National Council shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities.

Article 75 Review of Legislation

(1) All bills passed by the National Assembly shall be referred by the Speaker to the National Council.

(2) The National Council shall consider bills referred to it under Sub-Article (1) hereof and shall submit reports thereon with its recommendations to the Speaker.

(3) If in its report to the Speaker the National Council confirms a bill, the Speaker shall refer it to the President to enable the President to deal with it under Articles 56 and 64 hereof.

(4) (a) If the National Council in its report to the Speaker recommends that the bill be passed subject to the amendments proposed by it, such bill shall be referred by the Speaker back to the National Assembly.

(b) If a bill is referred back to the National Assembly under Sub-Article (a) hereof, the National Assembly may reconsider the bill and may make any amendments thereto, whether proposed by the National Council or not. If the bill is again passed by the National Assembly, whether in the form in which it was originally passed, or in an amended form, the bill shall not again be referred to the National Council, but shall be referred by the Speaker to the President to enable it to be dealt with under Articles 56 and 64 hereof.

(5) (a) If a majority of two-thirds of all the members of the National Council objects to the principle of a bill, this shall be mentioned in its report to the Speaker. In that event, the report shall also indicate whether or not the National Council proposes that amendments be made to the bill, if the principle of the bill is confirmed by the National Assembly under Sub-Article (b) hereof, and if amendments are proposed, details thereof shall be set out in the report.

(b) If the National Council in its report objects to the principle of the bill, the National Assembly shall be required to reconsider the principle. If upon such reconsideration the National Assembly reaffirms the principle of the bill by a majority of two-thirds of all its members, the principle of the bill shall no longer be an issue. If such two-thirds majority is not obtained in the National Assembly, the bill shall lapse.

(6) (a) If the National Assembly reaffirms the principle of the bill under Sub-Article 5(b) hereof by a majority of two-thirds of all its members, and the report of the National Council proposed that in such event amendments be made to the bill, the National Assembly shall then deal with the amendments proposed by the National Council, and in that event the provisions of Sub-Article 4(b) shall apply mutatis mutandis.

(b) If the National Assembly reaffirms the principle of the bill under Sub-Article 5(b) hereof by a majority of two-thirds of all its members, and the report of the National Council did not propose that in such event amendments be made to the bill, the National Council shall be deemed to have confirmed the bill, and the Speaker shall refer the bill to the President to be dealt with under Articles 56 and 64 hereof.

(7) Sub-Articles (5) and (6) hereof shall not apply to bills dealing with the levying of taxes or the appropriation of public monies.

(8) The National Council shall report to the Speaker on all bills dealing with the levying of taxes or appropriations of public monies within thirty (30) days of the date on which such bills were referred to it by the Speaker, and on all other bills within three (3) months of the date of referral by the Speaker, failing which the National Council will be deemed to have confirmed such bills and the Speaker shall then refer them promptly to the President to enable the President to deal with the bills under Articles 56 and 64 hereof.

(9) If the President withholds his or her assent to any bill under Article 56 hereof and the bill is then dealt with in terms of that Article, and is again passed by the National Assembly in the form in which it was originally passed or in an amended form, such bill shall not again be referred to the National Council, but shall be referred by the Speaker directly to the President to enable the bill to be dealt with in terms of Articles 56 and 64 hereof.

Article 76 Quorum

The presence of a majority of the members of the National Council shall be necessary to constitute a meeting of the National Council for the exercise of its powers and the performance of its functions.

Article 77 Voting

Save as is otherwise provided in this Constitution, all questions in the National Council shall be determined by a majority of the votes cast by members present

other than the Chairperson, or in his or her absence the Vice-Chairperson or the member presiding at that session, who shall, however, have and may exercise a casting vote in the case of an equality of votes.

CHAPTER 9

THE ADMINISTRATION OF JUSTICE

Article 78 The Judiciary

(1) The judicial power shall be vested in the Courts of Namibia, which shall consist of:

(a) a Supreme Court of Namibia;

(b) a High Court of Namibia;

(c) Lower Courts of Namibia.

(2) The Courts shall be independent and subject only to this Constitution and the law.

(3) No member of the Cabinet or the Legislature or any other person shall interfere with Judges or judicial officers in the exercise of their judicial functions, and all organs of the State shall accord such assistance as the Courts may require to protect their independence, dignity and effectiveness, subject to the terms of this Constitution or any other law.

(4) The Supreme Court and the High Court shall have the inherent jurisdiction which vested in the Supreme Court of South-West Africa immediately prior to the date of Independence, including the power to regulate their own procedures and to make court rules for that purpose.

Article 79 The Supreme Court

(1) The Supreme Court shall consist of a Chief Justice and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.

(2) The Supreme Court shall be presided over by the Chief Justice and shall hear and adjudicate upon appeals emanating from the High Court, including appeals which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights and freedoms guaranteed thereunder. The Supreme Court shall also deal with matters referred to it for decision by the Attorney-General under this Constitution, and with such other matters as may be authorised by Act of Parliament.

(3) Three (3) Judges shall constitute a quorum of the Supreme Court when it hears appeals or deals with matters referred to it by the Attorney-General under

this Constitution: provided that provision may be made by Act of Parliament for a lesser quorum in circumstances in which a Judge seized of an appeal dies or becomes unable to act at any time prior to judgment.

(4) The jurisdiction of the Supreme Court with regard to appeals shall be determined by Act of Parliament.

Article 80 The High Court

(1) The High Court shall consist of a Judge-President and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.

(2) The High Court shall have original jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions, including cases which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights and freedoms guaranteed thereunder. The High Court shall also have jurisdiction to hear and adjudicate upon appeals from Lower Courts.

(3) The jurisdiction of the High Court with regard to appeals shall be,determined by Act of Parliament.

Article 81 Binding Nature of Decisions of the Supreme Court

A decision of the Supreme Court shall be binding on all other Courts of Namibia and all persons in Namibia unless it is reversed by the Supreme Court itself, or is contradicted by an Act of Parliament lawfully enacted.

Article 82 Appointment of Judges

(1) All appointments of Judges to the Supreme Court and the High Court shall be made by the President on the recommendation of the Judicial Service Commission and upon appointment Judges shall make an oath or affirmation of office in the terms set out in Schedule 1 hereof.

(2) At the request of the Chief Justice the President may appoint Acting Judges of the Supreme Court to fill casual vacancies in the Court from time to time, or as ad hoc appointments to sit in cases involving constitutional issues or the guarantee of fundamental rights and freedoms, if in the opinion of the Chief Justice it is desirable that such persons should be appointed to hear such cases by reason of their special knowledge of or expertise in such matters.

(3) At the request of the Judge-President, the President may appoint Acting Judges of the High Court from time to time to fill casual vacancies in the Court, or to enable the Court to deal expeditiously with its work.

(4) All Judges, except Acting Judges, appointed under this Constitution shall hold office until the age of sixty-five (65) but the President shall be entitled to extend the retiring age of any Judge to seventy (70). It shall also be possible by Act of Parliament to make provision for retirement at ages higher than those specified in this Article.

Article 83 Lower Courts

(1) Lower Courts shall be established by Act of Parliament and shall have the jurisdiction and adopt the procedures prescribed by such Act and regulations made thereunder.

(2) Lower Courts shall be presided over by Magistrates or other judicial officers appointed in accordance with procedures prescribed by Act of Parliament.

Article 84 Removal of Judges from Office

(1) A Judge may be removed from office before the expiry of his or her tenure only by the President acting on the recommendation of the Judicial Service Commission.

(2) Judges may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.

(3) The Judicial Service Commission shall investigate whether or not a Judge should be removed from office on such grounds, and if it decides that the Judge should be removed, it shall inform the President of its recommendation.

(4) If the deliberations of the Judicial Service Commission pursuant to this Article involve the conduct of a member of the Judicial Service Commission, such Judge shall not participate in the deliberations and the President shall appoint another Judge to fill such vacancy.

(5) While investigations are being carried out into the necessity of the removal of a Judge in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommenation, suspend the Judge from office.

Article 85 The Judicial Service Commission

(1) There shall be a Judicial Service Commission consisting of the Chief Justice, a Judge appointed by the President, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia.

(2) The Judicial Service Commission shall perform such functions as are prescribed for it by this Constitution or any other law.

(3) The Judicial Service Commission shall be entitled to make such rules and regulations for the purposes of regulating its procedures and functions as are not inconsistent with this Constitution or any other law.

(4) Any casual vacancy in the Judicial Service Commission may be filled by the Chief Justice or in his or her absence by the Judge appointed by the President.

Article 86 The Attorney-General

There shall be an Attorney-General appointed by the President in accordance with the provisions of Article 32(3)(i)(cc) hereof.

Article 87 Powers and Functions of the Attorney-General

The powers and functions of the Attorney-General shall be:

(a) to exercise the final responsibility for the office of the Prosecutor-General;

(b) to be the principal legal adviser to the President and Government;

(c) to take all action necessary for the protection and upholding of the Constitution;

(d) to perform all such functions and duties as may be assigned to the Attorney-General by Act of Parliament.

Article 88 The Prosecutor-General

(1) There shall be a Prosecutor-General appointed by the President on the recommendation of the Judicial Service Commission. No person shall be eligible for appointment as Prosecutor-General unless such person:

(a) possesses legal qualifications that would entitle him or her to practise in all the Courts of Namibia;

(b) is, by virtue of his or her experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Prosecutor-General.

(2) The powers and functions of the Prosecutor-General shall be:

(a) to prosecute, subject to the provisions of this Constitution, in the name of the Republic of Namibia in criminal proceedings;

(b) to prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court;

(c) to perform all functions relating to the exercise of such powers;

(d) to delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any Court;

(e) to perform all such other functions as may be assigned to him or her in terms of any other law.

CHAPTER 10

THE OMBUDSMAN

Article 89 Establishment and Independence

(1) There shall be an Ombudsman, who shall have the powers and functions set out in this Constitution.

(2) The Ombudsman shall be independent and subject only to this Constitution and the law.

(3) No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all other organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.

(4) The Ombudsman shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him or her to practise in all the Courts of Namibia.

Article 90 Appointment and Term of Office

(1) The Ombudsman shall be appointed by Proclamation by the President on the recommendation of the Judicial Service Commission.

(2) The Ombudsman shall hold office until the age of sixty-five (65) but the President may extend the retiring age of any Ombudsman to seventy (70).

Article 91 Functions

The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following:

(a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;

(b) the duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services;

(c) the duty to investigate complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the

degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia;

(d) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place;

(e) the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding Sub-Articles through such means as are fair, proper and effective, including:

(aa) negotiation and compromise between the parties concerned;

(bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person;

(cc) referring the matter to the Prosecutor-General;

(dd) bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;

(ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;

(ff) reviewing such laws as were in operation before the date of Independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon;

(f) the duty to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General, pursuant thereto;

(g) the duty to report annually to the National Assembly on the exercise of his or her powers and functions.

Article 92 Powers of Investigation

The powers of the Ombudsman shall be defined by Act of Parliament and shall include the power:

(a) to issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman;

(b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent Court;

(c) to question any person;

(d) to require any person to co-operate with the Ombudsman and to disclose truthfully and frankly any information within his or her knowledge relevant to any investigation of the Ombudsman.

Article 93 Meaning of "Official"

For the purposes of this Chapter the word "official" shall, unless the context otherwise indicates, include any elected or appointed official or employee of any organ of the central or local government, any official of a para-statal enterprise owned or managed or controlled by the State, or in which the State or the Government has substantial interest, or any officer of the defence force, the police force or the prison service, but shall not include a Judge of the Supreme Court or the High Court or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer.

Article 94 Removal from Office

(1) The Ombudsman may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission.

(2) The Ombudsman may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.

(3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in Sub-Article (2) hereof and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation.

(4) While investigations are being carried out into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office.

CHAPTER 11

PRINCIPLES OF STATE POLICY

Article 95 Promotion of the Welfare of the People

The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:

(a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;

(b) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;

(c) active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;

(d) membership of the International Labour Organisation (ILO) and, where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO;

(e) ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;

(f) ensurance that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;

(g) enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State;

(h) a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State;

(i) ensurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;

(j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health;

(k) encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions;

(l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future;

in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

Article 96 Foreign Relations

The State shall endeavour to ensure that in its international relations it:

(a) adopts and maintains a policy of non-alignment;

(b) promotes international co-operation, peace and security;

(c) creates and maintains just and mutually beneficial relations among nations;

(d) fosters respect for international law and treaty obligations;

(e) encourages the settlement of international disputes by peaceful means.

Article 97 Asylum

The State shall, where it is reasonable to do so, grant asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group.

Article 98 Principles of Economic Order

(1) The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians.

(2) The Namibian economy shall be based, inter alia, on the following forms of ownership:

(a) public;

(b) private;

(c) joint public-private;

(d) co-operative;

(e) co-ownership;

(f) small-scale family.

Article 99 Foreign Investments

Foreign investments shall be encouraged within Namibia subject to the provisions of an Investment Code to be adopted by Parliament.

Article 100 Sovereign Ownership of Natural Resources

Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.

Article 101 Application of the Principles contained in this Chapter

The principles of state policy contained in this Chapter shall not of and by themselves be legally enforceable by any Court, but shall nevertheless guide the Government in making and applying laws to give effect to the fundamental objectives of the said principles. The Courts are entitled to have regard to the said principles in interpreting any laws based on them.

CHAPTER 12

REGIONAL AND LOCAL GOVERNMENT

Article 102 Structures of Regional and Local Government

(1) For purposes of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such regions and Local Authorities as may be determined and defined by Act of Parliament.

(2) The delineation of the boundaries of the regions and Local Authorities referred to in Sub-Article (1) hereof shall be geographical only, without any reference to the race, colour or ethnic origin of the inhabitants of such areas.

(3) Every organ of regional and local government shall have a Council as the principal governing body, freely elected in accordance with this Constitution and the Act of Parliament referred to in Sub-Article (1) hereof, with an executive and administration which shall carry out all lawful resolutions and policies of such Council, subject to this Constitution and any other relevant laws.

(4) For the purposes of this Chapter a Local Authority shall include all municipalities, communities, village councils and other organs of local government defined and constituted by Act of Parliament.

(5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

Article 103 Establishment of Regional Councils

(1) The boundaries of regions shall be determined by a Delimitation Commission in accordance with the principles set out in Article 102(2) hereof.

(2) The boundaries of regions may be changed from time to time and new regions may be created from time to time, but only in accordance with the recommendations of the Delimitation Commission.

(3) A Regional Council shall be established for every region the boundaries of which have been determined in accordance with Sub-Articles (1) and (2) hereof.

Article 104 The Delimitation Commission

(1) The Delimitation Commission shall consist of a Chairperson who shall be a Judge of the Supreme Court or the High Court, and two other persons to be appointed by the President with the approval of Parliament.

(2) The Delimitation Commission shall discharge its duties in accordance with the provisions of an Act of Parliament and this Constitution, and shall report thereon to the President.

Article 105 Composition of Regional Councils

Every Regional Council shall consist of a number of persons determined by the Delimitation Commission for the particular region for which that Regional Council has been established, and who are qualified to be elected to the National Council.

Article 106 Regional Council Elections

(1) Each region shall be divided into constituencies the boundaries of which shall be fixed by the Delimitation Commission in accordance with the provisions of an Act of Parliament and this Constitution: provided that there shall be no fewer than six (6) and no more than twelve (12) constituencies in each region.

(2) Each constituency shall elect one member to the Regional Council for the region in which it is situated.

(3) The elections shall be by secret ballot to be conducted in accordance with the provisions of an Act of Parliament, and the candidate receiving the most votes in any constituency shall be the elected member of the Regional Council for that constituency.

(4) All Regional Council elections for the various regions of Namibia shall be held on the same day.

(5) The date for Regional Council elections shall be determined by the President by Proclamation in the Gazette.

Article 107 Remuneration of Members of Regional Councils

The remuneration and allowances to be paid to members of Regional Councils shall be determined by Act of Parliament.

Article 108 Powers of Regional Councils

Regional Councils shall have the following powers:

(a) to elect members to the National Council;

(b) to exercise within the region for which they have been constituted such executive powers and to perform such duties in connection therewith as may be assigned to them by Act of Parliament and as may be delegated to them by the President;

(c) to raise revenue, or share in the revenue raised by the central Government within the regions for which they have been established, as may be determined by Act of Parliament;

(d) to exercise powers, perform any other functions and make such by-laws or regulations as may be determined by Act of Parliament.

Article 109 Management Committees

(1) Each Regional Council shall elect from amongst its members a Management Committee, which shall be vested with executive powers in accordance with the provisions of an Act of Parliament.

(2) The Management Committee shall have a Chairperson to be elected by the members of the Regional Council at the time that they elect the Management Committee, and such Chairperson shall preside at meetings of his or her Regional Council.

(3) The Chairperson and the members of the Management Committee shall hold office for three (3) years and shall be eligible for re-election.

Article 110 Administration and Functioning of Regional Councils

The holding and conducting of meetings of Regional Councils, the filling of casual vacancies on Regional Councils and the employment of officials by the Regional Councils, as well as all other matters dealing with or incidental to the administration and functioning of Regional Councils, shall be determined by Act of Parliament.

Article 111 Local Authorities

(1) Local Authorities shall be established in accordance with the provisions of Article 102 hereof.

(2) The boundaries of Local Authorities, the election of Councils to administer the affairs of Local Authorities, the method of electing persons to Local Authority Councils, the methods of raising revenue for Local Authorities, the remuneration of Local Authority Councillors and all other matters dealing with or incidental to the administration and functioning of Local Authorities, shall be determined by Act of Parliament.

(3) Persons shall be qualified to vote in elections for Local Authority Councils if such persons have been resident within the jurisdiction of a Local Authority for not less than one (1) year immediately prior to such election and if such persons are qualified to vote in elections for the National Assembly.

(4) Different provisions may be made by the Act of Parliament referred to in Sub-Article (2) hereof in regard to different types of Local Authorities.

(5) All by-laws or regulations made by Local Authorities pursuant to powers vested in them by Act of Parliament shall be tabled in the National Assembly and shall cease to be of force if a resolution to that effect is passed by the National Assembly.

CHAPTER 13

THE PUBLIC SERVICE COMMISSION

Article 112 Establishment

(1) There shall be established a Public Service Commission which shall have the function of advising the President on the matters referred to in Article 113 hereof and of reporting to the National Assembly thereon.

(2) The Public Service Commission shall be independent and act impartially.

(3) The Public Service Commission shall consist of a Chairperson and no fewer than three (3) and no more than six (6) other persons nominated by the President and appointed by the National Assembly by resolution.

(4) Every member of the Public Service Commission shall be entitled to serve on such Commission for a period of five (5) years unless lawfully removed before the expiry of that period for good and sufficient reasons in terms of this Constitution and procedures to be prescribed by Act of Parliament. Every member of the Public Service Commission shall be eligible for reappointment.

Article 113 Functions

The functions of the Public Service Commission shall be defined by Act of Parliament and shall include the power:

(a) to advise the President and the Government on:

(aa) the appointment of suitable persons to specified categories of employment in the public service, with special regard to the balanced structuring thereof;

(bb) the exercise of adequate disciplinary control over such persons in order to assure the fair administration of personnel policy;

(cc) the remuneration and the retirement benefits of any such persons;

(dd) all other matters which by law pertain to the public service;

(b) to perform all functions assigned to it by Act of Parliament;

(c) to advise the President on the identity, availability and suitability of persons to be appointed by the President to offices in terms of this Constitution or any other law.

CHAPTER 14

THE SECURITY COMMISSION

Article 114 Establishment and Functions

(1) There shall be a Security Commission which shall have the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner of Prisons and such other functions as may be assigned to it by Act of Parliament.

(2) The Security Commission shall consist of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Commissioner of Prisons and two (2) members of the National Assembly, appointed by the President on the recommendation of the National Assembly.

CHAPTER 15

THE POLICE AND DEFENCE FORCES AND THE PRISON SERVICE

Article 115 Establishment of the Police Force

There shall be established by Act of Parliament a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order.

Article 116 The Inspector-General of Police

(1) There shall be an Inspector-General of Police who shall be appointed by the President in terms of Article 32(4)(c)(bb) hereof.

(2) The Inspector-General of Police shall make provision for a balanced structuring of the police force and shall have the power to make suitable appointments to the police force, to cause charges of indiscipline among members of the police force to be investigated and prosecuted and to ensure the efficient administration of the police force.

Article 117 Removal of the Inspector-General of Police

The President may remove the Inspector-General of Policy from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

Article 118 Establishment of the Defence Force

(1) There shall be established by Act of Parliament a Namibian defence force with prescribed composition, powers, duties and procedures, in order to defend the territory and national interests of Namibia.

(2) The President shall be the Commander-in-Chief of the defence force and shall have all the powers and exercise all the functions necessary for that purpose.

Article 119 Chief of the Defence Force

(1) There shall be a Chief of the Defence Force who shall be appointed by the President in terms of Article 32(4)(c)(aa) hereof.

(2) The Chief of the Defence Force shall make provision for a balanced structuring of the defence force and shall have the power to make suitable appointments to the defence force, to cause charges of indiscipline among members of the defence force to be investigated and prosecuted and to ensure the efficient administration of the defence force.

Article 120 Removal of the Chief of the Defence Force

The President may remove the Chief of the Defence Force from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

Article 121 Establishment of the Prison Service

There shall be established by Act of Parliament a Namibian prison service with prescribed powers, duties and procedures.

Article 122 Commissioner of Prisons

(1) There shall be a Commissioner of Prisons who shall be appointed by the President in terms of Article 32(4)(c)(cc) hereof.

(2) The Commissioner of Prisons shall make provision for a balanced structuring of the prison service and shall have the power to make suitable appointments to the prison service, to cause charges of indiscipline among members of the prison service to be investigated and prosecuted and to ensure the efficient administration of the prison service.

Article 123 Removal of the Commissioner of Prisons

The President may remove the Commissioner of Prisons from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

CHAPTER 16

FINANCE

Article 124 Transfer of Government Assets

The assets mentioned in Schedule 5 hereof shall vest in the Government of Namibia on the date of Independence.

Article 125 The State Revenue Fund

(1) The Central Revenue Fund of the mandated territory of South-West Africa instituted in terms of Section 3 of the Exchequer and Audit Proclamation, 1979 (Proclamation 85 of 1979) and Section 31(1) of Proclamation R101 of 1985 shall continue as the State Revenue Fund of the Republic of Namibia.

(2) All income accruing to the central Government shall be deposited in the State Revenue Fund and the authority to dispose thereof shall vest in the Government of Namibia.

(3) Nothing contained in Sub-Article (2) hereof shall preclude the enactment of any law or the application of any law which provides that:

(a) the Government shall pay any particular monies accruing to it into a fund designated for a special purpose; or

(b) any body or institution to which any monies accruing to the State have been paid, may retain such monies or portions thereof for the purpose of defraying the expenses of such body or institution; or

(c) where necessary, subsidies be allocated to regional and Local Authorities.

(4) No money shall be withdrawn from the State Revenue Fund except in accordance with an Act of Parliament.

(5) No body or person other than the Government shall have the power to withdraw monies from the State Revenue Fund.

Article 126 Appropriations

(1) The Minister in charge of the Department of Finance shall at least once every year and thereafter at such interim stages as may be necessary, present for

the consideration of the National Assembly estimates of revenue, expenditure and income for the prospective financial year.

(2) The National Assembly shall consider such estimates and pass pursuant thereto such Appropriation Acts as are in its opinion necessary to meet the financial requirements of the State from time to time.

Article 127 The Auditor-General

(1) There shall be an Auditor-General appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly. The Auditor-General shall hold office for five (5) years unless removed earlier under Sub-Article (4) hereof or unless he or she resigns. The Auditor-General shall be eligible for reappointment.

(2) The Auditor-General shall audit the State Revenue Fund and shall perform all other functions assigned to him or her by the Government or by Act of Parliament and shall report annually to the National Assembly thereon.

(3) The Auditor-General shall not be a member of the public service.

(4) The Auditor-General shall not be removed from office unless a two-thirds majority of all the members of the National Assembly vote for such removal on the ground of mental incapacity or gross misconduct.

CHAPTER 17

CENTRAL BANK AND NATIONAL PLANNING COMMISSION

Article 128 The Central Bank

(1) There shall be established by Act of Parliament a Central Bank of the Republic of Namibia which shall serve as the State's principal instrument to control the money supply, the currency and the institutions of finance, and to perform all other functions ordinarily performed by a central bank.

(2) The Governing Board of the Central Bank shall consist of a Governor, a Deputy-Governor and such other members of the Board as shall be prescribed by Act of Parliament, and all members of the Board shall be appointed by the President in accordance with procedures prescribed by such Act of Parliament.

Article 129 The National Planning Commission

(1) There shall be established in the office of the President a National Planning Commission, whose task shall be to plan the priorities and direction of national development.

(2) There shall be a Director-General of Planning appointed by the President in terms of Article 32(3)(i)(dd) hereof, who shall be the head of the National

Planning Commission and the principal adviser to the President in regard to all matters pertaining to economic planning and who shall attend Cabinet meetings at the request of the President.

(3) The membership, powers, functions and personnel of the National Planning Commission shall be regulated by Act of Parliament.

CHAPTER 18

COMING INTO FORCE OF THE CONSTITUTION

Article 130 Coming into Force of the Constitution

This Constitution as adopted by the Constituent Assembly shall come into force on the date of Independence.

CHAPTER 19

AMENDMENT OF THE CONSTITUTION

Article 131 Entrenchment of Fundamental Rights and Freedoms

No repeal or amendment of any of the provisions of chapter 3 hereof, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.

Article 132 Repeal and Amendment of the Constitution

(1) Any bill seeking to repeal or amend any provision of this Constitution shall indicate the proposed repeals and/or amendments with reference to the specific articles sought to be repealed and/or amended and shall not deal with any matter other than the proposed repeals or amendments.

(2) The majorities required in Parliament for the repeal and/or amendment of any of the provisions of this Constitution shall be:

(a) two-thirds of all the members of the National Assembly; and

(b) two-thirds of all the members of the National Council.

(3) (a) Notwithstanding the provisions of Sub-Article (2) hereof, if a bill proposing a repeal and/or amendment of any of the provisions of this Constitution secures a majority of two-thirds of all the members of the National Assembly, but fails to secure a majority of two-thirds of all the members of the National Council, the President may by Proclamation make the bill containing the proposed repeals and/or amendments the subject of a national referendum.

(b) The national referendum referred to in Sub-Article (a) hereof shall be conducted in accordance with procedures prescribed for the holding of referenda by Act of Parliament.

(c) If upon the holding of such a referendum the bill containing the proposed repeals and/or amendments is approved by a two-thirds majority of all the votes cast in the referendum, the bill shall be deemed to have been passed in accordance with the provisions of this Constitution, and the President shall deal with it in terms of Article 56 hereof.

(4) No repeal or amendment of this Sub-Article or Sub-Articles (2) or (3) hereof in so far as it seeks to diminish or detract from the majorities required in Parliament or in a referendum shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.

(5) Nothing contained in this Article:

(a) shall detract in any way from the entrenchment provided for in Article 131 hereof of the fundamental rights and freedoms contained and defined in Chapter 3 hereof;

(b) shall prevent Parliament from changing its own composition or structures by amending or repealing any of the provisions of this Constitution: provided always that such repeals or amendments are effected in accordance with the provisions of this Constitution.

CHAPTER 20

THE LAW IN FORCE AND TRANSITIONAL PROVISIONS

Article 133 The First National Assembly

Notwithstanding the provisions of Article 46 hereof, the Constituent Assembly shall be deemed to have been elected under Articles 46 and 49 hereof, and shall constitute the first National Assembly of Namibia, and its term of office and that of the President shall be deemed to have begun from the date of Independence.

Article 134 Election of the First President

(1) Notwithstanding the provisions of Article 28 hereof, the first President of Namibia shall be the person elected to that office by the Constituent Assembly by a simple majority of all its members.

(2) The first President of Namibia shall be deemed to have been elected under Article 28 hereof and upon assuming office shall have all the powers, functions, duties and immunities of a President elected under that Article.

Article 135 Implementation of this Constitution

This Constitution shall be implemented in accordance with the provisions of Schedule 7 hereof.

Article 136 Powers of the National Assembly prior to the Election of a National Council

(1) Until elections for a National Council have been held:

(a) all legislation shall be enacted by the National Assembly as if this Constitution had not made provision for a National Council, and Parliament had consisted exclusively of the National Assembly acting on its own without being subject to the review of the National Council;

(b) this Constitution shall be construed as if no functions had been vested by this Constitution in the National Council;

(c) any reference in Articles 29, 56, 75 and 132 hereof to the National Council shall be ignored: provided that nothing contained in this Sub-Article shall be construed as limiting in any way the generality of Sub-Articles (a) and (b) hereof.

(2) Nothing contained in Sub-Article (1) hereof shall detract in any way from the provisions of Chapter 8 or any other provision of this Constitution in so far as they make provision for the establishment of a National Council, elections to the National Council and its functioning after such elections have been held.

Article 137 Elections of the First Regional Councils and the First National Council

(1) The President shall by Proclamation establish the first Delimitation Commission which shall be constituted in accordance with the provisions of Article 104(1) hereof, within six (6) months of the date of Independence.

(2) Such Proclamation shall provide for those matters which are referred to in Articles 102 to 106 hereof, shall not be inconsistent with this Constitution and shall require the Delimitation Commission to determine boundaries of regions and Local Authorities for the purpose of holding Local Authority and Regional Council elections.

(3) The Delimitation Commission appointed under such Proclamation shall forthwith commence its work, and shall report to the President within nine (9) months of its appointment: provided that the National Assembly may by resolution and for good cause extend the period within which such report shall be made.

(4) Upon receipt of the report of the Delimitation Commission the President shall as soon as reasonably possible thereafter establish by Proclamation the boundaries of regions and Local Authorities in accordance with the terms of the report.

(5) Elections for Local Authorities in terms of Article 111 hereof shall be held on a date to be fixed by the President by Proclamation, which shall be a date within six (6) months of the Proclamation referred to in Sub-Article (4) hereof, or within six (6) months of the date on which the legislation referred to in Article 111 hereof has been enacted, whichever is the later: provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held.

(6) Elections for Regional Councils shall be held on a date to be fixed by the President by Proclamation, which shall be a date within one (1) month of the date of the elections referred to in Sub-Article (5) hereof, or within one (1) month of the date on which the legislation referred to in Article 106(3) hereof has been enacted, whichever is the later: provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held.

(7) Elections for the first National Council shall be held on a date to be fixed by the President by Proclamation, which shall be a date within one (1) month of the date of the elections referred to in Sub-Article (6) hereof, or within one (1) month of the date on which the legislation referred to in Article 69(2) hereof has been enacted, whichever is the later: provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held.

Article 138 Courts and Pending Actions

(1) The Judge-President and other Judges of the Supreme Court of South-West Africa holding office at the date on which this Constitution is adopted by the Constituent Assembly shall be deemed to have been appointed as the Judge-President and Judges of the High Court of Namibia under Article 82 hereof on the date of Independence, and upon making the oath or affirmation of office in the terms set out in Schedule 5 hereof, shall become the first Judge-President and Judges of the High Court of Namibia: provided that if the Judge-President or any such Judges are sixty-five (65) years of age or older on such date, it shall be deemed that their appointments have been extended until the age of seventy (70) in terms of article 82 (4) hereof.

(2) (a) The laws in force immediately prior to the date of Independence governing the jurisdiction of Courts within Namibia, the right of audience before such Courts, the manner in which procedure in such Courts shall be conducted and the power and authority of the Judges, Magistrates and other judicial officers, shall remain in force until repealed or amended by Act of Parliament, and all proceedings pending in such Courts at the date of Independence shall be continued as if such Courts had been duly constituted as Courts of the Republic of Namibia when the proceedings were instituted.

(b) Any appeal noted to the Appellate Division of the Supreme Court of South Africa against any judgment or order of the Supreme Court of South-West Africa shall be deemed to have been noted to the Supreme Court of Namibia and shall be prosecuted before such Court as if that judgment or order appealed against had been made by the High Court of Namibia and the appeal had been noted to the Supreme Court of Namibia.

(c) All criminal prosecutions initiated in Courts within Namibia prior to the date of Independence shall be continued as if such prosecutions had been initiated after the date of Independence in Courts of the Republic of Namibia.

(d) All crimes committed in Namibia prior to the date of Independence which would be crimes according to the law of the Republic of Namibia if it had then existed, shall be deemed to constitute crimes according to the law of the Republic of Namibia, and to be punishable as such in and by the Courts of the Republic of Namibia.

(3) Pending the enactment of the legislation contemplated by Article 79 hereof:

(a) the Supreme Court shall have the same jurisdiction to hear and determine appeals from Courts in Namibia as was previously vested in the Appellate Division of the Supreme Court of South Africa;

(b) the Supreme Court shall have jurisdiction to hear and determine matters referred to it for a decision by the Attorney-General under this Constitution;

(c) all persons having the right of audience before the High Court shall have the right of audience before the Supreme Court;

(d) three (3) Judges shall constitute a quorum of the Supreme Court when it hears appeals or deals with matters under Sub-Articles (a) and (b) hereof: provided that if any such Judge dies or becomes unable to act after the hearing of the appeal or such matter has commenced, but prior to judgment, the law applicable in such circumstances to the death or inability of a Judge of the High Court shall apply mutatis mutandis;

(e) until rules of the Supreme Court are made by the Chief Justice for the noting and prosecution of appeals and all matters incidental thereto, the rules which regulated appeals from the Supreme Court of South-West Africa to the Appellate Division of the Supreme Court of South Africa, and were in force immediately prior to the date of Independence, shall apply mutatis mutandis.

Article 139 The Judicial Service Commission

(1) Pending the enactment of legislation as contemplated by Article 85 hereof and the appointment of a Judicial Service Commission thereunder, the Judicial Service Commission shall be appointed by the President by Proclamation and

shall consist of the Chief Justice, a Judge appointed by the President, the Attorney-General, an advocate nominated by the Bar Council of Namibia and an attorney nominated by the Council of the Law Society of South-West Africa: provided that until the first Chief Justice has been appointed, the President shall appoint a second Judge to be a member of the Judicial Service Commission who shall hold office thereon until the Chief Justice has been appointed. The Judicial Service Commission shall elect from amongst its members at its first meeting the person to preside at its meetings until the Chief Justice has been appointed. The first task of the Judicial Service Commission shall be to make a recommendation to the President with regard to the appointment of the first Chief Justice.

(2) Save as aforesaid the provisions of Article 85 hereof shall apply to the functioning of the Judicial Service Commission appointed under Sub-Article (1) hereof, which shall have all the powers vested in the Judicial Service Commission by this Constitution.

Article 140 The Law in Force at the Date of Independence

(1) Subject to the provisions of this Constitution, all laws which were in force immediately before the date of Independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court.

(2) Any powers vested by such laws in the Government, or in a Minister or other official of the Republic of South Africa shall be deemed to vest in the Government of the Republic of Namibia or in a corresponding Minister or official of the Government of the Republic of Namibia, and all powers, duties and functions which so vested in the Government Service Commission, shall vest in the Public Service Commission referred to in Article 112 hereof.

(3) Anything done under such laws prior to the date of Independence by the Government, or by a Minister or other official of the Republic of South Africa shall be deemed to have been done by the Government of the Republic of Namibia or by a corresponding Minister or official of the Government of the Republic of Namibia, unless such action is subsequently repudiated by an Act of Parliament, and anything so done by the Government Service Commission shall be deemed to have been done by the Public Service Commission referred to in Article 112 hereof, unless it is determined otherwise by an Act of Parliament.

(4) Any reference in such laws to the President, the Government, a Minister or other official or institution in the Republic of South Africa shall be deemed to be a reference to the President of Namibia or to a corresponding Minister, official or institution in the Republic of Namibia and any reference to the Government Service Commission or the government service, shall be construed as a reference to the Public Service Commission referred to in Article 112 hereof or the public service of Namibia.

(5) For the purposes of this Article the Government of the Republic of South Africa shall be deemed to include the Administration of the Administrator-General appointed by the Government of South Africa to administer Namibia, and any reference to the Administrator-General in legislation enacted by such Administration shall be deemed to be a reference to the President of Namibia, and any reference to a Minister or official of such Administration shall be deemed to be a reference to a corresponding Minister or official of the Government of the Republic of Namibia.

Article 141 Existing Appointments

(1) Subject to the provisions of this Constitution, any person holding office under any law in force on the date of Independence shall continue to hold such office unless and until he or she resigns or is retired, transferred or removed from office in accordance with law.

(2) Any reference to the Attorney-General in legislation in force immediately prior to the date of Independence shall be deemed to be a reference to the Prosecutor-General, who shall exercise his or her functions in accordance with this Constitution.

Article 142 Appointment of the First Chief of the Defence Force, the First Inspector-General of Police and the First Commissioner of Prisons

The President shall, in consultation with the leaders of all political parties represented in the National Assembly, appoint by Proclamation the first Chief of the Defence Force, the first Inspector-General of Police and the first Commissioner of Prisons.

Article 143 Existing International Agreements

All existing international agreements binding upon Namibia shall remain in force, unless and until the National Assembly acting under Article 63(2)(d) hereof otherwise decides.

CHAPTER 21

FINAL PROVISIONS

Article 144 International Law

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

Article 145 Saving

(1) Nothing contained in this Constitution shall be construed as imposing upon the Government of Namibia:

(a) any obligations to any other State which would not otherwise have existed under international law;

(b) any obligations to any person arising out of the acts or contracts of prior Administrations which would not otherwise have been recognised by international law as binding upon the Republic of Namibia.

(2) Nothing contained in this Constitution shall be construed as recognizing in any way the validity of the Administration of Namibia by the Government of the Republic of South Africa or by the Administrator-General appointed by the Government of the Republic of South Africa to administer Namibia.

Article 146 Definitions

(1) Unless the context otherwise indicates, any word or expression in this Constitution shall bear the meaning given to such word or expression in any law which deals with the interpretation of statutes and which was in operation within the territory of Namibia prior to the date of Independence.

(2) (a) The word "Parliament" shall mean the National Assembly and, once the first National Council has been elected, shall mean the National Assembly acting, when so required by this Constitution, subject to the review of the National Council.

(b) Any reference to the plural shall include the singular and any reference to the singular shall include the plural.

(c) Any reference to the "date of Independence" or "Independence" shall be deemed to be a reference to the day as of which Namibia is declared to be independent by the Constituent Assembly.

(d) Any reference to the "Constituent Assembly" shall be deemed to be a reference to the Constituent Assembly elected for Namibia during November 1989 as contemplated by United Nations Security Council Resolution 435 of 1978.

(e) Any reference to "Gazette" shall be deemed to be a reference to the Government Gazette of the Republic of Namibia.

Article 147 Repeal of Laws

The laws set out in Schedule 8 hereof are hereby repealed.

Article 148 Short Title

This Constitution shall be called the Namibian Constitution.

SCHEDULE 1

OATH/AFFIRMATION OF JUDGES

"I, _____, do hereby swear/solemnly affirm that as a Judge of the Republic of Namibia I will defend and uphold the Constitution of the Republic of Namibia as the Supreme Law and will fearlessly administer justice to all persons without favour or prejudice and in accordance with the laws of the Republic of Namibia.

(In the case of an oath)
So help me God."

SCHEDULE 2

OATH/AFFIRMATION OF MINISTERS AND DEPUTY-MINISTERS

"I, _____, do hereby swear/solemnly affirm that I will be faithful to the Republic of Namibia, hold my office as Minister/Deputy-Minister with honour and dignity, uphold, protect and defend the Constitution and faithfully obey, execute and administer the laws of the Republic of Namibia, serve the people of Namibia to the best of my ability, not divulge directly or indirectly any matters brought before the Cabinet and entrusted to me under secrecy, and perform the duties of my office and the functions entrusted to me by the President conscientiously and to the best of my ability.

(In the case of an oath)
So help me God."

SCHEDULE 3

OATH/AFFIRMATION OF MEMBERS OF THE NATIONAL ASSEMBLY AND THE NATIONAL COUNCIL

"I, _____, do hereby swear/solemnly affirm that I will be faithful to the Republic of Namibia and its people and I solemnly promise to uphold and defend the Constitution and laws of the Republic of Namibia to the best of my ability.

(In the case of an oath)
So help me God."

SCHEDULE 4

ELECTION OF MEMBERS OF THE NATIONAL ASSEMBLY

(1) For the purpose of filling the seventy-two (72) seats in the National Assembly pursuant to the provisions of Article 46 (1) (a) hereof, the total number of votes cast in a general election for these seats shall be divided by seventy-two (72) and the result shall constitute the quota of votes per seat.

(2) The total number of votes cast in favour of a registered political party which offers itself for this purpose shall be divided by the quota of voter per seat and the result shall, subject to paragraph (3), constitute the number of seats to which that political party shall be entitled in the National Assembly.

(3) Where the formula set out in paragraph (2) yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with other similar surpluses accruing to any other political party or parties participating in the election, and any undistributed seat or seats (in terms of the formula set out in paragraph (2)) shall be awarded to the party or parties concerned in sequence of the highest surplus.

(4) Subject to the requirements pertaining to the qualification of members of the National Assembly, a political party which qualifies for seats in terms of paragraphs (2) and (3) shall be free to choose in its own discretion which persons to nominate as members of the National Assembly to fill the said seats.

(5) Provision shall be made by Act of Parliament for all parties participating in an election of members of the National Assembly to be represented at all material stages of the election process and to be afforded a reasonable opportunity for scrutinising the counting of the votes cast in such election.

SCHEDULE 5

PROPERTY VESTING IN THE GOVERNMENT OF NAMIBIA

(1) All property of which the ownership or control immediately prior to the date of independence vested in the Government of the Territory of South West Africa, or in any Representative Authority constituted in terms of the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), or in the Government of Rehoboth, or in any other body, statutory or otherwise, constituted by or for the benefit of any such Government or Authority immediately prior to the date of Independence, or which was held in trust for or on behalf of the Government of an independent Namibia, shall vest in or be under the control of the Government of Namibia.

(2) For the purpose of this Schedule, "property" shall, without detracting from the generality of that term as generally accepted and understood, mean and include movable and immovable property, whether corporeal or incorporeal and wheresoever situate, and shall include any right or interest therein.

(3) All such immovable property shall be transferred to the Government of Namibia without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation or trust on or over such property and subject also to the provisions of this Constitution.

(4) The Registrar of Deeds concerned shall upon production to him or her of the title deed to any immovable property mentioned in paragraph (1) endorse such title deed to the effect that the immovable property therein described is vested in the Government of Namibia and shall make the necessary entries in his or her registers, and thereupon the said title deed shall serve and avail for all purposes as proof of the title of the Government of Namibia to the said property.

SCHEDULE 6

THE NATIONAL FLAG OF THE REPUBLIC OF NAMIBIA

The National Flag of Namibia shall be rectangular in the proportion of three in the length to two in the width, tierced per bend reversed, blue, white and green; the white bend reversed, which shall be one third of the width of the flag, is charged with another of red, one quarter of the width of the flag. In the upper hoist there shall be a gold sun with twelve straight rays, the diameter of which shall be one third of the width of the flag, with its vertical axis one fifth of the distance from the hoist, positioned equidistant from the top edge and from the reversed bend. The rays, which shall each be two fifths of the radius of the sun, issue from the outer edge of a blue ring, which shall be one tenth of the radius of the sun.

SCHEDULE 7

IMPLEMENTATION OF THIS CONSTITUTION

1. On the day of Independence, the Secretary-General of the United Nations shall administer to the President, elected in terms of Article 134 hereof, the oath or affirmation prescribed by Article 30 hereof.

2. The President shall appoint the Prime Minister and administer to him or her the oath or affirmation set out in Schedule 1 hereof.

3. The President shall administer to the first Judges of Namibia, appointed under Article 138 (1) hereof, the oath or affirmation set out in Schedule 5 hereof.

4. On the day determined by the Constituent Assembly the National Assembly shall first meet, at a time and at a place specified by the Prime Minister.

5. The members of the National Assembly, with the Prime Minister as Chairperson, shall:

   (a) Take the oath or affirmation prescribed by Article 55 hereof before the Judge-President or a Judge designated by the Judge-President for this purpose;

   (b) Elect the Speaker of the National Assembly.

6. The National Assembly, with the Speaker as Chairperson, shall:

   (a) Elect a Deputy-Speaker;

   (b) Conduct such business as its deems appropriate;

   (c) Adjourn to a date to be determined by the National Assembly.

7. The rules and procedures followed by the Constituent Assembly for the holding of its meetings shall, mutatis mutandis, be the rules and procedures to be followed by the National Assembly until such time as the National Assembly has adopted rules of procedure and standing orders under Article 59 hereof.

SCHEDULE 8

REPEAL OF LAWS

South-West Africa Constitution Act, 1968 (Act No. 39 of 1968)

Rehoboth Self-Government Act, 1976 (Act No. 56 of 1976)

Establishment of Office of Administrator-General for the Territory of South-West Africa Proclamation, 1977 (Proclamation No. 180 of 1977 of the State President)

Empowering of the Administrator-General for the Territory of South-West Africa to make Laws Proclamation, 1977 (Proclamation No. 181 of 1977 of the State President)

Representative Authorities Proclamation, 1980 (Proclamation No. AG 8 of 1980)

Representative Authority of the Whites Proclamation, 1980 (Proclamation No. AG 12 of 1980)

Representative Authority of the Coloureds Proclamation, 1980 (Proclamation No. AG 14 of 1980)

Representative Authority of the Owambos Proclamation, 1980 (Proclamation No. AG 23 of 1980)

Representative Authority of the Kavangos Proclamation, 1980 (Proclamation No. AG 26 of 1980)

Representative Authority of the Caprivians Proclamation, 1980 (Proclamation No. AG 29 of 1980)

Representative Authority of the Damaras Proclamation, 1980 (Proclamation No. AG 32 of 1980)

Representative Authority of the Namas Proclamation, 1980 (Proclamation No. AG 35 of 1980)

Representative Authority of the Tswanas Proclamation, 1980 (Proclamation No. AG 47 of 1980)

Representative Authority of the Hereros Proclamation, 1980 (Proclamation No. AG 50 of 1980)

Representative Authorities Powers Transfer Proclamation, 1989 (Proclamation No. AG 8 of 1989)

Government of Rehoboth Powers Transfer Proclamation, 1989 (Proclamation No. AG 32 of 1989)

Annex II

Comparison of the Constitution of the Republic of Namibia with the 1982 constitutional principles

The following indicates how the provisions of the Constitution of the Republic of Namibia, adopted by the Constituent Assembly on 9 February 1990, which is to enter into force on the date of independence, 21 March 1990 (see article 130 of the Constitution), comply with particular requirements of the Principles for a Constitution for an Independent Namibia set out in document S/15287, annex, section B, of 12 July 1982 (the "1982 Constitutional Principles"):

Principle B1. (a) "Namibia will be a unitary ... State"

The unitary nature of Namibia is expressed explicitly in the penultimate preambular paragraph and in article 1(1). More importantly, the Constitution as a whole calls for a unitary rather than a federal structure. In particular, the National Assembly is to be elected on the basis of proportional representation in the country as a whole (see art. 49 and schedule 4) with no member representing any particular area, the President is to be elected directly by the population as whole (art. 28(2)) and the only organ in which there is to be any regional representation is the National Council (art. 69(1)).

(b) "Namibia will be a ... sovereign ... State"

The sovereign nature of Namibia is expressed explicitly in the penultimate and the final preambular paragraphs and in article 1(1) and (2). More importantly, the Constitution calls for a State that is in no way dependent, in either its domestic or its international relations, on any other State and that conducts all of its own affairs.

(c) "Namibia will be a ... democratic State"

The democratic nature of Namibia is expressed explicitly in the penultimate preambular paragraph and in article 1(1) and (2). More importantly, the entire nature of the Constitution is that of a democratic State, in providing for an elected legislature and executive (see Principles B3 and 4 below), an independent judiciary (see Principles B3 and 5 below) and a catalogue of guaranteed human rights (see Principle B5 below). Article 17(1) gives all citizens "the right to participate in peaceful political activity intended to influence the composition and policies of the Government ... [and] ... to form and join political parties". The latter right is reaffirmed by article 21(1)(e), which is one of the rights referred to in paragraph (a) of Principle B5 below from which no derogation is permitted. Finally, article 95(k) calls on the Government to adopt "policies aimed at ... encouragement of the mass of the population ... to influence Government policy by debating its decisions".

Principle B2. (a) "The Constitution will be the supreme law of the State"

Article 1(6) of the Constitution reads: "This Constitution shall be the Supreme Law of Namibia" and the final paragraph of the Preamble refers to the Constitution "as the fundamental law of our ... Republic". The supremacy of the Constitution informs all its substantive articles. Attention is invited particularly to articles 5 (the fundamental rights enshrined in the Constitution to be upheld by all organs of Government), 24(3) and 26(5)(b) (certain provisions of the Constitution to prevail even in times of national disaster, states of national defence or public emergencies), 32 (the subjection of all presidential powers to the Constitution), 63 (the subjection of the functions and powers of the National Assembly to the Constitution), 78(2) (the subjection of the courts to the Constitution), 89(2) (the subjection of the Ombudsman to the Constitution). All principal public officials must take an oath on the Constitution (art. 30 and schedules 1, 2 and 3).

(b) "[The Constitution] may be amended only by a designated process involving the legislature or votes cast in a popular referendum, or both"

Article 132(2) and (3) specifies how the Constitution can be amended by a two-thirds majority of all the members of the National Assembly plus, once the National Council has been established (see arts. 136(1)(c) and 137(7)), by either a two-thirds majority of all the members of the National Council or by a two-thirds vote in a national referendum. Article 132(4) forbids any amendment of the Constitution that would diminish these majority requirements and article 131 forbids any amendment that would diminish or detract from any of the fundamental rights and freedoms contained and defined in chapter 3 (see Principle B5 below).

Principle B3. (a) "The Constitution will determine the organization and powers of all levels of government"

Chapters 5 (the President), 6 (the Cabinet), 7 (the National Assembly), 8 (the National Council), 9 (the administration of Justice - i.e. the courts) and 12 (regional and local government) of the Constitution determine respectively the organization and powers of the principal central organs and of local government.

(b) "[The Constitution] will provide for a system of government with three branches: an ... executive branch ... a legislative branch ... and a ... judicial branch ..."

Article 1(3) states that: "The main organs of the State shall be the Executive, the Legislature and the Judiciary." These are provided for respectively in chapters 5 and 6, 7 and 8, and 9.

(c) "... an elected executive branch .... The executive ... branch will be constituted by periodic and genuine elections which will be held by secret vote"

Under article 27(2) "The executive power of the Republic of Namibia shall vest in the President and the Cabinet". Under articles 28(2)(a) and 29(1)(a) the President is to be elected for a normal five-year term by "direct, universal and equal suffrage", except that the first President is elected by the Constituent Assembly (see art. 134(1)). Under article 35(1) the Cabinet is to consist of the President, the Prime Minister and other Ministers appointed from the members of the National Assembly (all except six of whom are elected, as discussed under Principle B3 (e) below).

(d) "... an ... executive branch which will be responsible to the legislative branch"

The National Assembly, acting with the National Council, may remove the President by impeachment under article 29(2). Under article 32(9) almost all Presidential actions can be reversed by a two-thirds vote of the National Assembly. As to members of the Cabinet, the National Assembly under article 39 may require the President to terminate the appointment of any member of the Cabinet in whom it resolves it has no confidence. Finally, article 41 states that "All Ministers shall be accountable ... both to the President and to Parliament".

(e) "... a legislative branch to be elected by universal and equal suffrage .... The ... legislative branch will be constituted by periodic and genuine elections which will be held by secret vote"

The legislative branch is to consist principally of the National Assembly, which under article 46(1)(a) is to consist of 72 voting members "elected by the registered voters by general, direct and secret ballot", for a maximum term of five years (art. 50). Under article 49 these elections are to be "in accordance with the principles of proportional representation" and the method of allocating seats is specified in schedule 4; (see also Principle B4 below). Although articles 32(5)(c) and (46)(1)(b) provide that there may be up to six appointed members of the National Assembly, these are not to have a vote and therefore will not have any genuine legislative functions.

The members of the National Council, which under articles 74(1)(a) and 75 will have basically ancillary functions in regard to the adoption of legislation, as well as certain miscellaneous functions to be exercised in co-ordination with the National Assembly, will under articles 69 and 70 be elected, for a maximum term of six years, by the regional councils from amongst their popularly elected members (art. 106(3)).

(f) "... a legislative branch ... which will be responsible for the passage of all laws"

Under article 44, "the legislative power of Namibia shall be vested in the National Assembly with the power to pass laws ..."; under article 63(1), "the National Assembly, as the principal legislative authority in and over Namibia, shall have the power ... to make and repeal laws ...". The only limitations on that power are the restricted review functions of the National Council provided for in articles 74(1)(a) and 75, and the need to secure presidential assent, which under articles 56 and 64 cannot be withheld if a bill receives a two-thirds vote in the National Assembly and if, should that be necessary, a competent court decides that the bill does not violate the Constitution. Although the President has limited power to proclaim regulations in a declared emergency, such regulations must under article 26(5) and (6) be promptly confirmed by the National Assembly to retain their validity. Finally, under article 108(d) Regional Councils may "make such by-laws or regulations as may be determined by Act of Parliament", but under article 111(5) these "shall cease to be of force if a resolution to that effect is passed by the National Assembly".

(g) "... an independent judicial branch ..."

A "free and independent judiciary" is called for by the third preambular paragraph. Article 78(2) specifies that "The Courts shall be independent ...", which is ensured by the procedure for appointing judges by the President on the recommendation of a Judicial Service Commission (arts. 32(4)(a)(aa) and 82(1)), for a life term, i.e. to age 65, subject to extension by the President to age 70 (art. 82(4)), and not subject to removal except on limited grounds and on the recommendation of the Judicial Service Commission (art. 84). Furthermore, judges and judicial officers are protected from interference by members the Cabinet, the Legislature or any other person, including the Ombudsman, by articles 78(3) and 93.

(h) "a ... judicial branch which will be responsible for the interpretation of the Constitution and for ensuring its supremacy and the authority of the law"

Both the Supreme Court and the High Court have jurisdiction covering "the interpretation, implementation and upholding of this Constitution", under articles 79(2) and 80(2). Under article 64 a competent court may also be asked to decide whether a bill adopted by the National Assembly conflicts with the Constitution. The function of the courts in general in ensuring the authority of the law follows from the unrestricted vesting of the judicial power in the courts of Namibia (art. 78(1)).

Principle B4. "The electoral system will be consistent with the principles in A.1 above"

These principles specified how the Constituent Assembly was to be elected by universal adult suffrage, secret ballot, with assistance to illiterate voters and a free electoral campaign guaranteed by freedom of speech, assembly, movement and press, resulting in an Assembly fairly representing the different political parties that gained substantial support in the election.

Under article 28(2)(a) the President is to be elected "by direct, universal and equal suffrage". Under articles 46(1)(a) and 49 the voting members of the National Assembly are to be elected "by the registered voters by general, direct and secret ballot" ... "in accordance with the principles of proportional representation" as specified in schedule 4. Article 17(2) provides that every citizen who has reached the age of 18 has the right to vote. The rights to organize political parties, to campaign and to freedom of speech, assembly, movement and press are guaranteed by articles 17(1) and 21(1)(a), (d) and (e), as discussed further in connection with Principle B5 (paragraphs (f)-(h), below).

Principle B5. (a) "There will be a declaration of fundamental rights ..."

The entire chapter 3 (arts. 5-25) of the Constitution is entitled "Fundamental human rights and freedoms". It should be noted that, by articles 131 and 132(5)(a) the provisions of that chapter are "entrenched" in the Constitution, in that no amendment thereof is permissible that would repeal, diminish or detract from these rights and freedoms. Articles 22 and 25(1) restrict or prohibit any legislative interference with these rights and freedoms.

Furthermore, under article 24(3), read together in particular with article 5 referred to therein and also with article 26(5)(b), there may not be any derogation from or suspension of any of the fundamental rights and freedoms enshrined in that chapter, even during declared emergencies or "states of national defence" including under martial law; in addition, a number of particularly important rights and freedoms are specifically referred to in article 24(3) which cannot be derogated from or suspended, as indicated in paragraphs (b), (e), (f), (h), (i), (j), (l), (m) and (n) below, in paragraph (c) under Principle B1 above and under Principle B6 below.

(b) "... [the] declaration of fundamental rights ... will include the right[s] to life ..."

The right to life is referred to in the second preambular paragraph, and article 6 unconditionally bars capital punishment. This is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended.

(c) "[rights to] ... personal liberty ...."

Liberty is referred to in the second preambular paragraph. Article 7 prohibits deprivation "of personal liberty except according to procedures established by law". Article 11(1) prohibits arbitrary arrest or detention, articles 11(2) to (5) and 24(2)(a) to (d) specify precisely the rights of arrested or detained persons, including illegal immigrants, and article 15(5) specifically bars any preventive detention of children under 16.

(d) "[rights to] ... freedom of movement ...."

Article 21(1)(g), (h) and (i) guarantees the right of all persons to move freely throughout Namibia, to reside or settle in any part of Namibia and to leave and return to Namibia.

(e) "[rights] ... to freedom of conscience ...;"

Article 21(1)(b) guarantees "freedom of thought, conscience and belief". This is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended.

(f) "... [rights] ... to freedom of expression ...."

Article 21(1)(a) guarantees "freedom of speech and expression, which shall include freedom of the press and other media". This is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended.

(g) "... [rights] ... to freedom of assembly ...."

Article 21(1)(d) guarantees the right to "assemble peaceably and without arms".

(h) "... [rights] ... to freedom of ... association, including political parties and trade unions;"

Article 21(1)(e) guarantees "freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties"; this is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended. Article 17(1) guarantees citizens the right to participate in peaceful political activity, including to form and join political parties. Article 95(c) encourages the formation of independent trade unions.

(i) "[rights] ... to due process ..."

Article 12(1)(a)-(f) sets out the procedures guaranteeing a fair trial in determining civil rights and obligations and disposing of criminal charges. This is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended.

(j) "[rights] ... to ... equality before the law ..."

Article 10(1) specifies that "all persons shall be equal before the law." This is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended.

(k) "... [rights] ... to protection from arbitrary deprivation of private property or deprivation of private property without just compensation ..."

Article 16(1) guarantees to all persons the right to "acquire, own and dispose of all forms of ... property", although permitting its limitation in respect of non-citizens. Article 16(2) regulates the right of expropriation by the State and calls for "the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament".

(l) "... [rights] ... to freedom from racial, ethnic, religious or sexual discrimination"

Article 10(2) specifies that "no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status"; this is one of the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended. Article 23(1) specifically prohibits racial discrimination and the practice and ideology of apartheid and article 23(2) and (3) makes provision for correcting the effects of past discrimination by affirmative action. (See also article 14(1) and the second preambular paragraph.)

(m) "The declaration of rights will be consistent with the provisions of the Universal Declaration of Human Rights"

The aforementioned provisions, which are based on the 1948 Declaration, are all consonant therewith. In addition it should be noted that the Constitution also provides for a number of other rights that were not recited in the 1982 Principles but are provided for in the Declaration:

Right	Article of Constitution	Article of Universal Declaration
Human dignity	8(1) 8(2)(a)	1
Freedom from torture	8(2)(b) a/	5
No slavery or servitude	9 a/	4
Privacy	13	12
Family	14	16
Children	15	25(2)
Religion	19, a/ 21(1)(c) a/	18
Profession	21(1)(j)	23(1)
Education	20	26

a/ These are among the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended.

In addition, a number of economic and social rights, as well as the right to asylum, called for by the Universal Declaration, are referred to in chapter 11 (Principles of State policy).

(n) "Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights"

Article 5 provides that "the fundamental rights and freedoms enshrined in [the Chapter entitled "Fundamental human rights and freedoms"] ... shall be enforceable by the Courts in the manner hereinafter prescribed". Article 25(2) to (4) specifies the access of aggrieved persons to the courts and the latters' powers to fashion appropriate remedies. Article 95(h) seeks to assist in the practical implementation of this guarantee by providing for legal aid in specified circumstances. Article 24(3) prohibits "denial of access by any persons to legal practitioners or a Court of law", and this is among the rights referred to under Principle B5 (a) above which cannot be derogated from or suspended. Furthermore, article 91(a) and (e)(dd) gives the Ombudsman power to investigate complaints concerning violations of fundamental rights and freedoms and to bring proceedings before competent courts for an interdict or some other suitable remedy.

Principle B6. "It will be forbidden to create criminal offences with retrospective effect or to provide for increased penalties with retrospective effect"

Article 12(3) includes precisely the above-stated prohibitions. This is one of the rights referred to under paragraph (a) of Principle B5 above which cannot be derogated from or suspended.

Principle B7. (a) "Provision will be made for the balanced structuring of the public service, the police service and the defence services and for equal access by all to recruitment of these services"

Articles 113(a)(aa), 116(2), 119(2) and 122(2) respectively empower the Public Service Commission to advise on "the appointment of suitable persons to ... employment in the public service, with special regard to the balanced structuring thereof", and require the Inspector-General of Police to "make provision for a balanced structuring of the police force", the Chief of the Defence Force to do so for "the defence force" and the Commissioner of Prisons to do so for "the prison service". In addition, article 23(2) empowers Parliament to legislate in order to achieve "a balanced structuring of the public service, the police force, the defence force and the prison service". Article 91(b) gives the Ombudsman the task of investigating, inter alia, complaints relating "to the failure to achieve a balanced structuring of [the public, defence, police and prison] services or equal access by all to the recruitment of such services".

(b) "The fair administration of personnel policy in relation to these services will be assured by appropriate independent bodies"

Article 112(1) and (2) establishes an "independent" Public Service Commission and article 113(a)(bb) specifically charges the Commission to advise on "the exercise of adequate disciplinary control ... to assure the fair administration of personnel policy". Article 91(b) charges the independent Ombudsman (art. 89(2)) with "the duty to investigate complaints concerning ... the failure to achieve ... fair administration in relation to [the public, defence, police and prison] services".

Principle B8. "Provision will be made for the establishment of elected councils for local or regional administration, or both"

Chapter 12 in general and article 102(1) in particular provides for "regional and local government, ... which shall consist of ... regions and

Local Authorities ...". Article 102(3) requires that "every organ of regional and local government shall have a Council as the principal governing body, freely elected in accordance with this Constitution ...".